

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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SHENZHEN XINGCHEN XUANYUAN INDUSTRIAL CO.  
LTD.,

Index No. \_\_\_\_\_/2023

Plaintiff,

**SUMMONS**

-against-

AMAZON.COM SERVICES, LLC, and AMAZON.COM, INC.,

Defendants.

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**TO THE ABOVE-NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** and required to serve upon Plaintiff's attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial in accordance with C.P.L.R. § 503(a).

Dated: New York, New York  
June 16, 2023

JULIE GUO  
*Attorney for Plaintiff*  
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New York, New York 10016  
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By: /s/ Julie Guo  
Julie Guo

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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SHENZHEN XINGCHEN XUANYUAN  
INDUSTRIAL CO. LTD.,

Plaintiff,

-against-

AMAZON.COM SERVICES, LLC

and AMAZON.COM, INC.,

Defendants.

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Index No. \_\_\_\_\_/2023

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**VERIFIED COMPLAINT**

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Plaintiff SHENZHEN XINGCHEN XUANYUAN INDUSTRIAL CO., LTD. (“XINGCHEN”), by and through its attorney Julie Guo, alleges upon personal knowledge as to itself and upon information and belief as to all other matters:

**NATURE OF THE ACTION**

1. XINGHEN brings this action against Defendants AMAZON.COM SERVICES, LLC’S and AMAZON.COM, INC.’s egregious pattern or practice of unlawfully seizing Plaintiff’s net sales proceeds under the Amazon Services Business Solutions Agreement (BSA or “Agreement”, Exhibit P-A1) between Plaintiff and Defendants.
2. Amazon is the dominant online marketplace. It controls about 65% to 70% of all U.S. online marketplace sales.<sup>1</sup> With such kind of e-commerce dominance, small retailers do not have any viable or meaningful choice other than accepting Amazon's terms if they want to get their products in front of online consumers.<sup>2</sup>
3. In addition to providing online retail platform service and referring customers to third-party sellers, Amazon also provides the sellers with the Fulfillment by Amazon ("FBA") program service<sup>3</sup>. Third-party sellers who use FBA services keep their product inventory in Amazon's warehouses or "fulfillment centers." After a customer places an order online, Amazon fulfills the order by picking, packing, and shipping those products.<sup>4</sup> The majority of third-party sellers not only use, but rely on the FBA services,<sup>5</sup> despite the high fees associated with its use, to maintain a favorable search position afforded them by Amazon's algorithm.<sup>6</sup>

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<sup>1</sup> See “*Investigation of Competition in Digital Markets*,” Majority Staff Report and Recommendations, House Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary (Oct. 6, 2020) [hereinafter the “House Report”], available at : <https://www.govinfo.gov/content/pkg/CPRT-117HPRT47832/pdf/CPRT-117HPRT47832.pdf>.

<sup>2</sup> Marcia Savage, *Amazon's e-commerce dominance: Is the price too high?*, THE FUTURE OF COMMERCE (January 28, 2022), available at <https://www.the-future-of-commerce.com/2022/01/28/amazons-e-commerce-dominance-is-the-price-too-high>.

<sup>3</sup> See “Fulfillment by Amazon,” available at <https://sell.amazon.com/fulfillment-by-amazon>.

<sup>4</sup> *Id.*

<sup>5</sup> House Report at 288, n.1780-81 (“More than 73% of all ... sellers worldwide reportedly rely on FBA services”).

<sup>6</sup> *Id.* at n.1781 (explaining that seller success on Amazon is tied to its use of FBA services because Amazon’s algorithm favors FBA sellers).

4. Sales on Amazon fall into one of two categories: (1) first-party sales, which refer to the sales of Amazon's own private-label products or wholesale products sourced by Amazon, and (2) third-party sales, which refer to sales by independent merchants who sell their own products through the Amazon Platform ("third-party sellers"). ***Competition is present between first-party sales (Amazon's direct sales) and third-party sales*** since both compete to gain more customers and sales on the same platform. Lawmakers have investigated Amazon's private-label practices and ***its collection of third-party seller data.***<sup>7</sup>
5. As Amazon continues to amass more of the e-commerce market and abuses its market dominance, third-party sellers have accused Amazon of arbitrarily blocking their seller accounts and withholding sales proceeds, spying on them, copying their best-selling products, giving Amazon's own products—first-party sales—preferential search results, and blocking third-party sellers' account to reduce competition with its own private labeled product sales.
6. In the U.S., the Securities and Exchange Commission ("SEC") is investigating ***Amazon for misusing third-party seller data to benefit its own product sales***<sup>8</sup>. The House Judiciary Committee passed the *Ending Platform Monopolies Act*, which aimed to rein in tech giants by eliminating "the conflicts of interest that arise from a dominant platform's ownership and reach across multiple business lines." ***That is what exactly Amazon is doing, running a dominant online retailer platform for third-party sellers and, at the same time, having its own private sales on the Amazon marketplace as well.***
7. Furthermore, Amazon relies on automated mechanisms and error-prone fraud detection software to identify and punish third-party sellers Amazon suspects of violating the BSA and its incorporated policies. ***Algorithmic errors can lead to abrupt account deactivation and removal of product listings, which can be financially devastating for third-party sellers.*** For example, on July 2021,

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<sup>7</sup> See Annie Palmer, "Amazon referred to DOJ for potential criminal obstruction of Congress" available at <https://www.cnbc.com/2022/03/09/amazon-referred-to-doj-for-potential-criminal-obstruction-of-congress.html>.

<sup>8</sup> See Ben Unglesbee, "Amazon under investigation by SEC over disclosures on seller data use: WSJ" (April 7, 2022), available at <https://www.retaildive.com/news/amazon-under-investigation-by-sec-over-disclosures-on-seller-data-use-wsj/621735/>

Amazon wrongfully blocked the seller account of Chukar Cherries ("Chukar"), which is a Washington-based company that had been selling on Amazon since 2003, causing Chukar to sustain substantial financial losses<sup>9</sup>. Chukar is only one of the victims of Amazon's arbitrary account blocking. *Without presenting evidence to sellers to support its allegations of term violations, Amazon blocked over 55,000 seller accounts in 2021<sup>10</sup>, seizing all the sales proceeds, amounting to billions of dollars.* Amazon accused most of these third-party sellers of soliciting sponsored reviews, *which are not even considered illegal activities* under Federal Trade Commission laws. *Even Amazon itself did the sponsored reviews-paying its workers to tweet Amazon positively under its Ambassador Program<sup>11</sup>.*

8. Before an independent merchant can open a seller account ("Seller Account") on the Amazon platform, *all third-party sellers must fully accept the terms and conditions* outlined in Amazon's BSA, which contains 1) Section 3 that allows Amazon's arbitrary account blocking and 2) infamous Section 2 that allows Amazon to **permanently** withhold **any payments** to the third-party sellers. Independent seller merchants have no negotiation power regarding the fairness and enforceability of the contract terms. Accordingly, this makes the BSA an *adhesion contract*.
9. Through abrupt seller account deactivations under Section 3 of the BSA, Amazon *removes the selling privileges of third-party sellers at will*, thus reducing the competition between third-party sellers and Amazon's own sales.
10. In addition, upon account deactivation, *Amazon simultaneously confiscates the entire sales proceeds in the third-party Plaintiff's account*, which ranges from thousands to even millions of dollars in cash, representing two weeks to two months of a Plaintiff's sales proceeds for the

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<sup>9</sup> See Katherine Anne Long, "Amazon abruptly banned Washington state treat-maker Chukar Cherries. Months of appeals went unheeded," The Seattle Times (Sept. 27, 2021), available at <https://www.seattletimes.com/business/amazon/amazon-abruptly-banned-washington-state-treat-maker-chukar-cherries-months-of-appeals-went-unheeded/>.

<sup>10</sup> Id.

<sup>11</sup> See Isobel Asher Hamilton, "Amazon shut down its program that paid warehouse 'ambassadors' to tweet positively about the company, report says". Business Insider (Jan 26, 2022), available at <https://www.businessinsider.com/amazon-shut-down-twitter-ambassador-program-reports-2022-1>

Plaintiff's sold merchandise on Amazon. *Through this scheme, Amazon further boosts its corporate profit by confiscating the proceeds found in third-party sellers' accounts.* Amazon accomplishes this unwarranted money grab through Section 2 of the BSA.

11. Section 2 of the BSA provides in pertinent parts: "If we **determine** that your account—or any other account you have operated—has been used to engage in deceptive, fraudulent, or illegal activity (including the sale of counterfeit goods), or to repeatedly violate our Program Policies, then we may in our sole discretion permanently withhold any payments to you."
12. **Section 2** of the BSA gives Amazon the arbitrary authority to permanently withhold any sales proceeds in third-party seller accounts upon Amazon's sole determination. The exercise of this power is limited by the duty of good faith and fair dealing.
13. Multiple arbitrators already ruled in the cases of Amazon sellers against Amazon that Section 2 of the BSA is an invalid liquidated damage clause and an unenforceable penalty clause, as well as substantively unconscionable.
14. In addition, Section 8 of the BSA exonerates Amazon from loss of profits, business, revenue, or damages sustained by sellers due to improper account blocking and fund confiscation. This clause has been declared invalid pursuant to public policy in the case of *Shaffer v. Amazon Services, LLC*, 2:11-bk-28944-DPC Adversary No.: 2:13-ap-00799 (2021).
15. Pursuant to Section 18 of the BSA, Plaintiff has the right to elect arbitration "by telephone, written submissions, or in person at a mutually agreed location." Parties agree on the sellers' written submission option in the Arbitration Clause-Section 18 of BSA because parties acknowledge and agree that 1) third-party sellers on Amazon's online marketplace are from all over the world, it is not feasible, not convenient, and too expensive for sellers to fly to the US from overseas to conduct an in-person hearing; and 2) by choosing written submission, sellers can save over thousands of AAA's second filings, arbitrator fee and hearing room fee.
16. Plaintiff filed an arbitration demand with the American Arbitration Association ("AAA"), Case No. 01-22-0000-2381, and elected to submit the arbitration by written submissions per its rights under

the Arbitration Agreement. Also, right before the Arbitrator held the preliminary hearing to decide the procedural matter, the Claimant's counsel emailed the Arbitrator the Arbitration Agreement-Section 18 of the BSA, advising the Arbitrator that the Claimant is entitled to choose a written submission method per the Arbitration Agreement and the Claimant had chosen the written submission method (Exhibit P-A2). However, during the preliminary hearing, the arbitrator denied Plaintiff's written submission right and ordered a two-day in-person hearing in New York in 2022 during the pandemic time (Exhibit P-A3). The in-person hearing order doubled the arbitration cost for written submission, causing over \$44,000 arbitrator fee and 10,000 travel cost for the Plaintiff, a total of nearly \$100,000 dollars of arbitration costs for both parties, for an arbitration case with only \$120,000 of the claim amount (Exhibit P-A4).

17. Plaintiff filed an objection to the three-day in-person hearing order, in which Plaintiff explained the significant cost increase and travel restrictions caused by the three-day in-person hearing order and advised the Arbitrator that Plaintiff is entitled to written submission under the Arbitration Agreement. However, the Arbitrator refused to follow the written submission provision in the Arbitration Agreement and insisted on the hearing (Exhibit P-A5).
18. Plaintiff is unable to afford the significant cost increase caused by the two-day in-person hearing order, and then the Arbitrator dismissed the proceeding on June 1, 2023 (See Exhibit P-A6).

### **JURISDICTION & VENUE**

19. The Court has jurisdiction over Defendant pursuant to CPLR §§ 301.
20. Venue is proper in this jurisdiction pursuant to CPLR § 503(a).

### **PARTIES**

21. The Plaintiff is a Chinese company with its principal place of business in Shenzhen, China (Exhibit P1), and was a third-party seller on Amazon.com.
22. Defendant AMAZON.COM SERVICES, LLC is a limited liability company organized under the laws of the state of Washington, and Defendant AMAZON.COM, INC. is a Delaware corporation



("Amazon"). Both Defendants have a principal place of business in Seattle, Washington. Amazon owns and operates the Amazon.com website and equivalent international websites and does business within the City of New York, State of New York. At all relevant times, Amazon has operated a website at <http://amazon.com>, which offers products to consumers, including those residing in New York City and New York State.

### FACTS

23. In the present case, Plaintiff became a third-party seller on Amazon.com on January 1, 2021, by ***adhering to*** the BSA in opening a seller account ("seller account", Exhibit P2) on Amazon's Seller Central ("Seller Central").
24. Plaintiff enrolled in Amazon's Facilitated By Amazon program ("FBA") in North America in or around August 2018, stored inventory in Amazon's warehouses, and regularly paid Amazon a fee for the use of its FBA services.
25. From January 1 to June 24, 2021, Plaintiff generated over \$2,300,000 in sales revenue by selling its products on the Amazon Platform until Amazon deactivated Plaintiff's Account and terminated the BSA on June 24, 2021.
26. On or about June 24, 2021, Amazon suddenly accused the Plaintiff of BSA term violations and deactivated the Seller Account, and terminated its BSA with Plaintiff without the advance notice required by section 3 of the BSA (Exhibit P3).
27. Upon deactivating the Seller Account, Plaintiff could no longer sell any products and suffered a complete loss of sales revenue on Amazon. Before the Seller Account deactivation, Plaintiff had offered its products on Amazon and paid all fees promptly, including sales commissions, account subscription fees, FBA, and other fees, which account for over 35% of Plaintiff's sales proceeds<sup>12</sup>.

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<sup>12</sup> See Agatha Aviso, "Amazon Seller Fees: Cost of Selling on Amazon in 2022," <https://fitsmallbusiness.com/amazon-seller-fees/>.

28. Simultaneously, Amazon seized entire sales proceeds in Plaintiff's seller account, over \$124,446.96 in November 2021 (Exhibit P4). Amazon keeps deducting unauthorized charges from the frozen fund after account blocking. The current frozen fund amount is less than \$75,000 dollars.
29. Amazon's termination notice is stated in pertinent part as follows:  
*"After 90 days following this notification, you may separately request a funds disbursement by contacting [disbursement-appeals@amazon.com](mailto:disbursement-appeals@amazon.com)".*
30. After Plaintiff followed Amazon's instructions in good faith and waited for 90 days, Amazon sent Plaintiff a final notice, which says that Amazon made a final decision and would not release Plaintiff's funds (Exhibit P5). As of today, Amazon still refuses to release Plaintiff's funds.
31. The frozen sales proceeds represent customer payment for Plaintiff's sold merchandise. The Plaintiff is the "seller" of the goods and the owner of the sales proceeds in the seller account. Amazon is merely an Interactive Computer Service Provider facilitating sales through its e-commerce website. And before account blocking, Amazon has already collected and deducted from these proceeds all sales commissions and other fees that it is entitled to.
32. Furthermore, all the customer refunds have been fully refunded and deducted from the frozen sales proceeds after account blocking. Therefore, the sales proceeds in the seller account withheld by Amazon belong to Plaintiff, not Amazon. Amazon has a duty to release the frozen sales proceeds and pay a pre-judgment and post-judgment interest for its improper fund withholding. However, as of today, Defendant Amazon still holds Plaintiff's sales proceeds and refuses to release them to Plaintiff.

**FIRST CAUSE OF ACTION**

*For Declaratory Relief-Section 2 Is Unenforceable*

33. The Plaintiff realleges paragraphs 1 through 32 as if fully set forth herein.

34. Pursuant to the Agreement, Amazon was obliged to release the sales proceeds in the seller account at the termination of the BSA to Plaintiff. It also owed a duty under Section 3 of the Agreement to give 30 days' notice of termination.
35. Amazon contends that compliance with its policies, which policies are incorporated within the BSA, constitute conditions precedent for the release of Plaintiff's funds. Amazon further contends that the attendance of Plaintiff at an in-person video verification interview to determine Plaintiff's identity (IPI) is a condition precedent to Amazon's obligation under the BSA to release Plaintiff's funds.
36. Plaintiff further seeks a declaration that the imposition of an in-person video verification interview (IPI) by Amazon after it terminated the BSA is an extra-contractual provision imposed by Amazon after the termination of the BSA and is not a condition precedent to the release of Plaintiff's sales proceeds.
37. Amazon further contends that it has the right to permanently withhold the Plaintiff's sales proceeds pursuant to Section 2 of BSA. However, pursuant to the governing law-Washington law, Section 2 of the BSA is ***an unenforceable penalty clause*** rather than an enforceable liquidated damages clause as well as unenforceable due to its procedural and substantive unconscionability.
38. Section 2 of the BSA essentially allows retention by Amazon of ***all*** generated revenues irrespective of potential invalidity. In *Brower Co. v. Garrison*, the court required that a liquidated damage clause must meet certain preconditions. 2 Wash. App. 424, 468 P.2d 469 (Wash. App. 1970). "*The amount of damages stipulated must be a reasonable estimation of compensation for the damages caused by the contractual breach. The scope of the harm caused by the breach must be difficult for accurate estimation. A liquidated damage clause becomes a penalty when "A sum (is) inserted in a contract, not as the measure of compensation for its breach, but rather as a punishment for default, or by way of security for actual damages which may be sustained by reason of non-performance, and it involves the idea of punishment. It is the payment of a stipulated sum on breach of contract,*

*irrespective of the damage sustained."* *Id.* at 432, 468 P.2d at 475 (internal quotation marks and citation omitted). Indeed, that is true of Section 2 of the BSA.

39. Simply put, a liquidated damage clause becomes a penalty when the amount fixed has a terrorizing effect of inducing performance rather than compensating loss – as here.
40. Section 2 of the BSA is an unenforceable penalty clause rather than a proper liquidated damages clause because it essentially allows retention by Amazon of **all sales revenues** irrespective of potential invalidity, regardless of the size of the claimed wrongdoing or the sales proceeds withheld. As such, ***it is not a reasonable forecast of just compensation for the harm caused by a breach, which is the first part of the test in Washington for determining the enforceability of a liquidated damages clause.*** *Wallace Real Estate Inv.* at 889, 881 P.2d at 1015. Reasonableness of the forecast will be judged as of the time the contract was entered." *Walter Implement, Inc. v. Focht*, 107 Wash. 2d 553, 559, 730 P.2d 1340, 1343 (1987) (internal citation omitted).
41. Section 2 was part of a standard form printed Agreement, the BSA, and an indefinite withholding of sales proceeds, large or small, for a possible policy violation, large or small, was anything but fair. The BSA gives Amazon discretionary authority to interpret and apply section 2, and that power to determine the operation of those terms is limited by the duty of ***good faith and fair dealing***.
42. Plaintiff further seeks a declaration that the permanent withholding provision of section 2 of the BSA is unenforceable as a confiscation clause rather than a proper liquidated damages clause.

## **SECOND CAUSE OF ACTION**

### *For Breach of Contract*

43. Plaintiff realleges paragraphs 1 through 42 as if fully set forth herein.
44. Plaintiff has performed all terms, conditions, covenants, and promises required by it on its part to be performed pursuant to the Agreement.
45. Defendant breached the Agreement by terminating the Agreement without any notice.

46. Defendants further breached the Agreement by refusing to release Plaintiff's sales proceeds in the seller account.
47. As a proximate result of Defendant's breach of Section 2 and 3 the BSA, Plaintiff has been damaged.

### **THIRD CAUSE OF ACTION**

#### *Conversion*

48. Plaintiff realleges paragraphs 1 through 47 as if fully set forth herein.
49. At all times herein mentioned, Plaintiff was and still is entitled to the possession of the personal property, namely: the frozen sales proceeds in the Seller Account.
50. Defendant failed and refused, and continues to fail and refuse, to return the property to Plaintiff, thus converting the property to its own use.
51. As a proximate result of Defendant's conversion, Plaintiff suffered the damages, which are the natural, reasonable, and proximate results of the conversion.

### **FOURTH CAUSE OF ACTION**

#### *Unjust Enrichment*

52. Plaintiff repeats and incorporates by reference paragraphs 1 through 51 as if fully set forth herein.
53. A person has been "unjustly enriched" when he has profited or enriched himself at another's expense, contrary to equity. Restatement (Third) of Restitution and Unjust Enrichment § 1. A person who is unjustly enriched at the expense of another is liable in restitution to the other. *Dragt v. Dragt/DeTray, LLC*, 139 Wash.App. 560, 576, 161 P.3d 473 (2007).
54. Amazon has been unjustly enriched by confiscating the entire sales proceeds in the seller account upon its termination of the BSA. Plaintiff has refunded all the customer refund requests from its sales proceeds; however, Amazon did not refund any portion of the sales commissions it charged. Also, Amazon did not incur any actual damages; however, it confiscated the Plaintiff's entire sales

proceeds upon the termination of the BSA after Amazon had already deducted its sales commissions and other fees from these sales proceeds.

55. Amazon owes a duty to immediately release the confiscated sales proceeds to Plaintiff.

#### **FOURTH CAUSE OF ACTION**

##### *Unfair or Deceptive Act or Practice under the Washington Consumer Protection Act (CPA)*

56. Plaintiff repeats and realleges paragraphs 1 through 55 and incorporates by reference as if fully set forth herein.
57. Amazon's conduct as herein described constitutes unfair practices and a violation of Washington's Consumer Protection Act (CPA) under RCW 19.86.093 by terminating the BSA without notice and confiscating Plaintiff's net sales proceeds, which negatively affected the public interest because millions of third-party sellers and eventually all the customers are harmed by reduced competition between Amazon's own private sales and those of third-party sellers.
58. The CPA entitles any person who has been injured in their business or property pursuant to a violation of the CPA to bring an action for damages together with the costs of suit and a reasonable attorney fee.
59. Plaintiff has been damaged by Amazon's violation of the CPA, by reason of Amazon's improper account deactivation and confiscation of Plaintiff's sales proceeds.
60. Plaintiff has incurred the costs of pursuing these damages as well as reasonable attorney's fees.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment against Defendants as follows:

- a. Declaring that the permanent withholding provision of section 2 of the BSA is unenforceable and ordering Amazon to release Plaintiff's net sales proceeds currently withheld, less than \$75,000, and pay pre-judgment and post-judgment interest, at the rate of 9.750% (Washington State Register, RCW 4.56.110(3)(b)), calculated from the date the

account was blocked to the payment date, through the Plaintiff's attorney escrow account;

- b. Ordering Amazon to refund prior six month payment from Plaintiff to Amazon before account blocking and pay Plaintiff's damages according to proof;
- c. Ordering Amazon to pay Plaintiff's costs of suit and reasonable attorney's fees; and
- d. Granting such other relief as this Court may deem just and proper.

Dated: New York, New York  
June 16, 2023

By: /s/ Julie Guo  
JULIE GUO  
*Attorney for Plaintiff*

**ATTORNEY VERIFICATION**

STATE OF NEW YORK )

) ss:

COUNTY OF NEW YORK )

**ZHIHUI (JULIE) GUO**, an attorney duly licensed to practice law in the Courts of the State of New York, states the following Declaration from Petitioner is a true and correct copy provided by the Petitioner under the penalties of perjury.



Zhihui Julie Guo





AMERICAN ARBITRATION ASSOCIATION

Case No. \_\_\_\_\_

DECLARATION OF XINGLIANG LIU

SHENZHEN XINGCHEN XUANYUAN INDUSTRIAL CO., LTD

I, Xingliang Liu, declare:

1. I am the legal representative of SHENZHEN XINGCHEN XUANYUAN INDUSTRIAL CO., LTD ("Seller"). I make this declaration based on personal knowledge, and Seller's records produced and maintained in the ordinary course of business.

2. Seller has an Amazon "Seller Central" account in North America, identified by the Merchant Token A33ILBDLHZZJM ("Account"). Seller registered its Account in May 2018 and regularly paid Amazon a subscription fee to use and maintain its Account. Seller also enrolled in the Fulfillment by Amazon ("FBA") program. Amazon deactivated Seller's Account on June 24, 2021, and simultaneously froze the funds in the Account, then amounting to \$145,294.37, which represent sales proceeds from Seller-sold products. Amazon claimed that Seller repeatedly violated Amazon's terms and conditions or policies, which Seller denies.

3. In the deactivation notice, Amazon stated:

We find that you have repeatedly violated Amazon terms and conditions or policies. [As t]hese violations m[ight] [obstruct] [Amazon services from being provided, by this] notice, we have deactivated your [seller] account.

This policy prohibits the following activities:

- Creat[ing], modify[ing], or post[ing] reviews or community content [regarding] your [own] [products] or services.
- Creat[ing], modify[ing], or post[ing] reviews or community content [regarding] your competitor's [products] or services.
- [Offering] compensation for [customer] reviews.
- [Offering] compensation[,] including free or discounted [products,] in exchange for creating, modifying or posting reviews or community content.

4. Amazon did not point to a shred of evidence, much less cite a single example, to support its purported "finding" of such "repeated violations" by Seller. Seller denies engaging in any of the foregoing activities; it did not resort to any customer review manipulation whatsoever. For the year prior to November 17, 2021, Seller received a total of 1,413 customer reviews in connection with the sale of its products. 93% of those reviews received a positive rating, and all

of those reviews received an average rating of 4.7 stars out of 5. All 1,413 customer reviews received during that period are true, authentic, unsolicited and not manipulated in any other way.

5. Upon Account deactivation, Seller could no longer sell any products and has suffered a complete loss of sales revenue. Prior to Account deactivation, Seller had offered its products on the Amazon platform and served customers in North America.

6. From January 1 to June 24, 2021, when Seller's Account was deactivated by Amazon, Seller generated over \$2,300,000 in sales revenue by selling its products on the Amazon platform. As noted, since Account deactivation, Seller has suffered a complete loss of sales revenue. Consequently, Seller spent the entire amount of the net profits on those sales on its business operation expenses and other bills.

7. Seller's overall sales revenue was exclusively generated through the Amazon platform, and there is no other comparable platform for Seller to relocate. Without any sales revenue from Seller's Account after deactivation, Seller is on the verge of filing for bankruptcy and may be unable to continue this arbitration without emergency relief, as it does not have any other reliable sources of income.

8. Seller's most recent bank account statement is submitted herewith. It shows that there was only ¥137,738.86 (or \$21,623.05) in Seller's bank account as of September 30, 2021.

9. As noted, upon Account deactivation, Amazon froze all funds in Seller's Account, then amounting to \$145,294.37, since reduced, as of November 29, 2021, to \$120,761.20 after deductions for the costs and expenses associated with inventory removal. Currently, Seller has no cash to pay its operation costs and other expenses, and has thus incurred liabilities for payment defaults to multiple parties. If Seller continues to be unable to pay creditors' past due invoices or invoices coming due, it will be at risk of litigation and may be liable for breach of contract and liquidated damages or other losses. To keep it operating and stave off bankruptcy, Seller needs to access its frozen Account funds immediately.

10. Upon Account deactivation, Amazon stated that Seller could submit a funds disbursement request to [disbursement-appeals@amazon.com](mailto:disbursement-appeals@amazon.com) 90 days after deactivation. Accordingly, on September 28, 2021, Seller submitted a funds disbursement request to Amazon per its instructions. On October 11, 2021, Amazon notified Seller that its Account was in "the funds appeal period" and requested that Seller participate in a verification interview. On October 21, 2021, Seller completed a verification interview, during which Seller provided Amazon with all the information it had requested, including: Seller's business license; the identification card and passport of Seller's representative; bank statement; utility bill; and the name and address of Seller's supplier. Unfortunately, on October 26, 2021, Amazon denied Seller's request and continues to withhold Seller's Account funds.

11. Amazon also demanded that Seller remove all its inventory from Amazon's warehouses, otherwise Amazon would destroy or otherwise dispose of the inventory and Seller would be required to pay the disposition costs. At the time of Account deactivation, Seller had inventory in Amazon's warehouses with a sales value of \$1,018,261.37. The costs and expenses estimated



for removing the inventory from those warehouses is \$225,494.25, which includes fees charged by Amazon, the cost of overseas warehousing and the costs of transportation of goods from Amazon's warehouses to new warehouses. Currently, Seller has no cash to remove the entirety of its inventory and may suffer its forced disposition by Amazon. Accordingly, Seller also needs immediate access to its frozen Account sales proceeds to begin to afford the costs associated with inventory removal.

12. To mitigate the total loss of sales revenue caused by Account deactivation by Amazon, and attempt to sell its inventory on other e-commerce platforms, Seller needs funds immediately as well to begin to open accounts with and advertise on those platforms. The estimated amount needed to cover those costs is \$165,000, which breaks down as follows:

Platform	Opening Cost (\$USD)	Advertising Cost (\$USD)	Total (\$USD)
Walmart	30,000	20,000	50,000
Wish	20,000	15,000	35,000
eBay	25,000	20,000	45,000
Shopify	20,000	15,000	35,000
Total	95,000	70,000	165,000

13. In summary, due to Account deactivation and seizure of Account funds by Amazon, Seller is currently facing a financial crisis and is on the verge of filing for bankruptcy. Accordingly, to avoid bankruptcy and mitigate its losses, Seller needs immediate access to its frozen funds to pay its creditors and begin to afford the above-listed costs and expenses associated with removing its inventory from Amazon's warehouses and open and advertise new seller accounts on other e-commerce platforms. Without immediate access to those funds, Seller is on the verge of filing for bankruptcy, as noted, and may be unable to continue this arbitration without emergency relief.

I declare on behalf of the Seller under penalty of perjury under the laws of the United States and 28 U.S.C. Section 1746, that all facts set forth herein are true to the best of my recollection and knowledge, and as to any matters stated upon information and belief, I believe them to be true.

Dated: January 7, 2022



Corporate Seal



# Business License

Unified Social Credit Code: 9144030032660025XK

Name: SHENZHEN XINGCHEN XUANYUAN YOUXIAN GONGSI also referred as  
"Shenzhen Xingchen Xuanyuan Industrial Co., Ltd."

Type of company: limited liability company

Address: 29D, Huijin Tower, Huibin Plaza, Dongbin Road, Nanshan Street,  
Nanshan District, Shenzhen City, Guangdong Province, China

Legal Representative: Liu Xingliang

Date of establishment: February 05,2015

## Notices

1. The business scope of the commercial entities is determined by the articles of association. The scope of business belongs to the laws and regulations, and the relevant business activities can only be carried out after the approved projects have obtained the approval documents of the company.
2. Relevant matters such as the scope of business of commercial entities and licensing approval items, as well as annual report information and other credit information, please make the Shenzhen Municipal Market Supervision and Administration Bureau consult with the commercial entities' credit letter publicity platform (website <http://www.szcredit.com.cn>) or the two-dimensional code scanning license for inquiry.
3. Commercial entities shall submit the annual report of the previous year to the commercial registration authority from January 1 to June 30 each year. The commercial subject shall publicize the information of the commercial subject to the society in accordance with (Provisional Regulations on Publicity of Enterprise Information) and other provisions.



专用章  
This translated version coincides with the original  
深圳市红心翻译服务有限公司  
Shenzhen Honson Translation Services Co., Ltd  
电话Tel: +8617718466660

Registered by: Shenzhen Municipal Market  
Supervision and Administration Bureau (Seal)

January 30, 2018



Supervised by the State Administration for Industry and  
Commerce of the People's Republic of China





# 营业执照

统一社会信用代码 9144030032660025XK

名称 深圳星辰轩辕实业有限公司  
类型 有限责任公司  
住所 深圳市南山区南山街道东滨路汇滨广场汇锦阁29D  
法定代表人 刘星亮  
成立日期 2015年02月05日

## 重要提示

1. 商事主体的经营范围由章程确定。经营范围中属于法律、法规规定应当经批准的项目，取得许可审批文件后方可开展相关经营活动。
2. 商事主体经营范围和许可审批项目等有关事项及年报信息和其他信用信息，请登录深圳市市场和质量监督管理委员会商事主体信用信息公示平台（网址<http://www.szcredit.org.cn>）或扫描执照的二维码查询。
3. 商事主体须于每年1月1日-6月30日向商事登记机关提交上一年度的年度报告。商事主体应当按照《企业信息公示暂行条例》等规定向社会公示商事主体信息。



登记机关

2018年01月30日





## AFFIDAVIT OF TRANSLATION

Country of P. R. China )

) SS:

City of Shenzhen )

I, Meng Shuyao, being duly sworn, depose and state:

1. The company, Shenzhen Honson Translation Service Co., Ltd. holds the translation services license or certificate.

2. The translator is fluent in both Chinese Language and English Language.

3. I hereby certify that the translator have translated the document, which is in Chinese language and is attached to this Affidavit.

3.1 XCXY US Company's Business License 2021.12.3

6.2 XCXY US (2021.6.01)Notice Policy Warning 2021.12.3

6.2 XCXY US (2021.6.24)Amazon sales permission has been revoked 2021.12.3

10.1 Notice to Remove FBA Inventory 2021.12.3

Company bank account statement

4. I hereby further certify that the translator is competent to translate from Chinese into English, and that the translation is true, accurate and complete to the best of their knowledge, ability and belief.

Date: 12/21/2021

Signature or Seal



Name: Shenzhen Honson Translation Service Co., Ltd. Meng Shuyao

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English

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Inventory

Pricing

Orders

Advertising

Stores

Growth

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Brands

# Merchant Token

[Account Info](#)

Your Merchant Token

A33ILBDLHZZJM

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24 June 2021

**Your Amazon sales permission has been revoked**

D.Champ Hello!

According to Article 3 of Amazon's Business Solutions Agreement, your Amazon.com sales account has been deactivated and your products have been removed.

We will work with you to resolve this issue, and in the meantime, we will withhold all funds in your account. These funds will not be transferred to you, but will remain in your account. The funds in your account may be withheld for 90 days or more. Amazon may withhold payments to you if we determine that your account is selling counterfeit or adulterated goods or prohibited goods, engaging in fraudulent, other illegal activities, or abuse.

If there are any outstanding orders, please arrange the shipment in time to avoid further affecting your account.

Why did this happen?

We find that you have repeatedly violated Amazon's terms and conditions or policies. These violations may hinder the provision of Amazon services. By issuing this notice, we have deactivated your sales account.

This policy prohibits the following activities:

- Create, modify, or post reviews or community content about your own goods or services.
- Create, modify, or post reviews or community content about your competitors' goods or services.
- Provide compensation for buyer reviews.
- Provide compensation (including free or discounted goods) in exchange for creating, modifying or posting reviews or community content.

You can view your balance and settlement information in the "Payment" section of the seller's platform. If you have any questions about this, please send an email to payments- [funds@amazon.com](mailto:funds@amazon.com)

Was your account disabled in error?

If you think this operation was wrong, please explain to us. Your description should include the following information:

- Evidence or examples that your account complies with our policy.

How to send these information?

Please submit these information as described in the banner at the top of the account status page:

[https://sellercentral.amazon.com/performance/notifications?ref=ah\\_em\\_pra](https://sellercentral.amazon.com/performance/notifications?ref=ah_em_pra).

What if I don't take any measures?

If we do not receive the required information, your account will be deactivated and the funds in your account may be withheld for 90 days or more. 90 days after this notice is issued, you can contact [disbursement-appeals@amazon.com](mailto:disbursement-appeals@amazon.com) to apply for payment separately. We will conduct a separate survey to evaluate your account. If we find that you are involved in deceptive, fraudulent or illegal activities; Abuse of our system; Or repeatedly violate our policy of protecting buyers and sales partners, we may withhold some or all of the funds in your account.

We are ready to help you.

If you have any questions about the "Prohibited Seller Activities and Operations" policy, please refer to:

- <https://sellercentral.amazon.com/gp/help/200386250>

If you have any questions about the "Fund Withholding" policy, please refer to:

- <https://sellercentral.amazon.com/gp/help/help.html?itemID=G9RA9LYBJ3QP27M6>

You can view account performance in two ways: one is visit

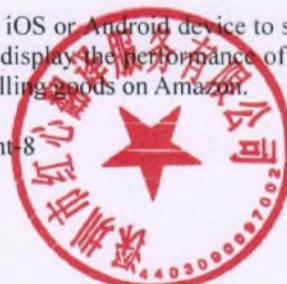
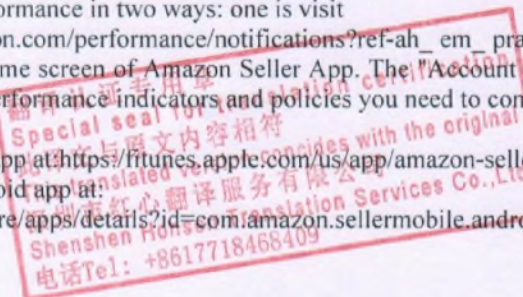
[https://sellercentral.amazon.com/performance/notifications?ref=ah\\_em\\_pra](https://sellercentral.amazon.com/performance/notifications?ref=ah_em_pra); Second, use an iOS or Android device to select "Account status" on the home screen of Amazon Seller App. The "Account Status" page will display the performance of your account according to the performance indicators and policies you need to comply with when selling goods on Amazon.

- Visit and download iOS app at <https://itunes.apple.com/us/app/amazon-seller/id794141485?mt=8>

- Visit and download Android app at:

[https://play.google.com/store/apps/details?id=com.amazon.sellermobile.android&hl=en\\_US](https://play.google.com/store/apps/details?id=com.amazon.sellermobile.android&hl=en_US)

Seller Performance Team  
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Special seal for translation certification  
此译文与原文内容相符  
This translated version concides with the original  
深圳市红心翻译服务有限公司  
Shenshen Honson Translation Services Co.,Ltd  
电话Tel: +8617718468409



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June 24, 2021

您的 Amazon 销售权限已被撤销



D.Champ 您好！

根据亚马逊的《商业解决方案协议》第 3 条的规定，您的 Amazon.com 卖家账户已被停用，并且您的商品已被移除。

我们会与您共同商讨解决这个问题，在此期间，我们将扣留您账户中的所有资金。这些资金不会转给您，但会留在您的账户中。您账户中的资金可能会被扣留 90 天或更长时间。如果我们确定您的账户销售仿造或假冒商品或者禁售商品、参与欺诈活动、参与其他不合法活动或存在滥用行为，Amazon 可能会扣留本应支付给您的款项。

如有任何未完结的订单，请及时安排发货，以免进一步影响您的账户。

为什么会发生这种情况？

我们发现您屡次违反亚马逊的条款和条件或政策。这些违规行为可能会阻碍亚马逊服务的提供，发出此通知即表示我们已经停用您的卖家账户。

此政策禁止以下活动：

- 创建、修改或发表关于您自己的商品或服务的评论或社区内容。
- 创建、修改或发表关于您竞争对手的商品或服务的评论或社区内容。
- 为买家评论提供补偿。
- 提供补偿（包括提供免费商品或打折商品），以换取创建、修改或发表评论或社区内容。

您可以在卖家平台的“付款”部分查看您的余额和结算信息。如果您对此有任何疑问，请发送邮件至 [payments-funds@amazon.com](mailto:payments-funds@amazon.com)。

您的账户停用是否有误？

如果您认为此操作有误，请向我们说明情况。您的说明应包含以下信息：

- 证明您的账户符合我们政策的证据或示例。

如何发送这些信息？

请按照“账户状况”页面顶部横幅中的说明提交这些信息：

[https://sellercentral.amazon.com/performance/notifications?ref=ah\\_em\\_pra](https://sellercentral.amazon.com/performance/notifications?ref=ah_em_pra)。

如果我不采取任何措施，会怎么样？

如果我们没有收到所需信息，您的账户将处于停用状态，您账户中的资金可能会被扣留 90 天或更长时间。在此通知发出 90 天后，您可以联系 [disbursement-appeals@amazon.com](mailto:disbursement-appeals@amazon.com) 单独申请付款。我们将单独进行调查以评估您的账户。如果我们发现您参与欺骗性、欺诈性或不合法的活动；滥用我们的系统；或一再违反我们保护买家和销售伙伴的政策，我们可能会扣留您账户中的部分或全部资金。

我们随时为您提供帮助。

如果您对“禁止的卖家活动和操作”政策有疑问，请参考：

- <https://sellercentral.amazon.com/gp/help/200386250>

如果您对“资金扣留”政策有疑问，请参考：

- <https://sellercentral.amazon.com/gp/help/help.html?itemID=G9RA9LYBJ3QP27M6>

您可以通过两种方式查看账户绩效：一是访问

[https://sellercentral.amazon.com/performance/notifications?ref=ah\\_em\\_pra](https://sellercentral.amazon.com/performance/notifications?ref=ah_em_pra)；二是使用 iOS 或安卓设备在亚马逊卖家应用的主屏幕上选择“账户状况”。“账户状况”页面会根据您在亚马逊商城销售商品所需达到的绩效指标和要遵守的政策显示您账户的表现情况。

- 访问 <https://itunes.apple.com/us/app/amazon-seller/id794141485?mt=8> 下载 iOS 应用

- 访问 [https://play.google.com/store/apps/details?id=com.amazon.sellermobile.android&hl=en\\_US](https://play.google.com/store/apps/details?id=com.amazon.sellermobile.android&hl=en_US) 下载安卓应用

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MARKETPLACES  
3

OPEN ORDERS  
0

TODAY'S SALES  
\$0.00

BUYER MESSAGES  
1


BUY BOX WINS  
--

TOTAL BALANCE  
\$121,431.27

IPI  
615

GLOBAL PROMOTIONS SALES  
--

Restock Inventory



SKU: 11  
ASIN: B016W4QTV8

Sales in the last 30 days  
Days of Supply  
Total Inventory  
Recommended Quantity

Dismiss

0  
0  
0  
1

Over 24 hours target  
Under 24 hours target

Dismiss

0  
0  
0  
1

Over 24 hours target  
Under 24 hours target

Buyer Messages

You have messages that require a response

Seller Poll

I know how to report a violation of Amazon's policies

Strongly Agree

Agree

Neither Agree nor Disagree

Disagree

Strongly Disagree

Total Balance

USD

North America  
United States: Amazon.com  
Canada: Amazon.ca  
Mexico: Amazon.com.mx

Total Balance  
\$121,431.27

Currency exchange rates and conversions are provided for informational purposes only. Currency exchange rates are subject to change, and estimated sales figures may not reflect taxes or fees applicable to your sales.

Alert

Your account has been deactivated  
Please click "Reactivate Your Account" below to resume selling

Seller Forums

NOV 17, 2021

Late shipping rate, but shipped on time

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NOV 17, 2021

Christmas Ornament being classified as Adult HUH?

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NOV 17, 2021

Sales complete garbage today anyone?

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News

NOV 16, 2021

Update to Amazon US referral and FBA fees, starting January 18, 2022

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NOV 16, 2021

Launching CSBA Rewards: Amazon's world-class customer service network...

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Download payment settlement reports in flat file v2 format

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https://sellercentral.amazon.com/gp/homepage.html?ref=xx\_home\_logo\_xx

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Catalog	Add Products	Inventory	Pricing	Orders	Advertising
	Complete Your Drafts				
	View Selling Applications				
Growth	Growth Opportunities	Inventory Planning	Negotiated Pricing	Manage Returns	Vine
	Fulfillment Programs				
	Explore Programs				
	Custom Program				
Lending	Product Opportunity Explorer	Remote Fulfillment with FBA	Performance	Manage SAFE-T Claims	Coupons
Other Amazon Links	Amazon.com Home Page	Add a Product	Account Health	Partner Network	Prime Exclusive Discounts
	Your Trade-In Account				
	Kindle Direct Publishing				
	Amazon Associates				
Your Buyer Account		Inventory Reports	Feedback	Find Apps and Services	B2B
Amazon Seller Coaching	Amazon Selling Coach	Manage FBA Shipments	A-to-z Guarantee Claims	Manage Your Apps	B2B Central
	Business Reports				
	Fulfillment				
	Advertising Reports				
Return Reports	Return Reports	Upload Images	Chargeback Claims	Explore Services	Product Opportunities
	Custom Reports				
	Tax Document Library				
Stores	Manage Stores	Upload and manage videos	Performance Notifications	Manage Service Requests	Manage Quotes
Brands	Brand Analytics	Manage Product Documents	Voice of the Customer	Develop Apps	Business profile
	Brand Protection				
	Manage Experiments				
	Brand Dashboard				
Customer Reviews	Brand Catalog Manager	Reports	Seller University		
	Customer Engagement				
	Virtual Bundles				
	Brand Referral Bonus				

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D.Champ | United States

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October 26, 2021

## Your Amazon.com Funds Status



Hello D.Champ,

After completing our investigation and reviewing the information you provided, we have determined that your Amazon seller account has been used to engage in deceptive, fraudulent, or illegal activity that harms our customers, other selling partners, and our store.

What happens now?

The funds in your account will not be disbursed to you. This is a final decision made after reviewing the information you provided.

We may not respond to further emails about this issue.

Where can I find more information about this policy?

If you have questions about this decision, please review our help page in Seller Central at the following link:

<https://sellercentral.amazon.com/gp/help/external/help.html?itemID=9RA9LYBJ3QP27M6>

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From: [https://sellercentral.amazon.com/gp/help/external/G1791?language=en\\_US](https://sellercentral.amazon.com/gp/help/external/G1791?language=en_US)

## Amazon Services Business Solutions Agreement

The version of this Agreement in English is the definitive legal version. A translation into [Chinese](#) is available for your ease of reference.

### General Terms

Welcome to **Amazon Services Business Solutions**, a suite of optional services for sellers including: [Selling on Amazon](#), [Fulfillment by Amazon](#), [Amazon Advertising](#), [Transaction Processing Services](#), and the [Selling Partner API](#).

THIS AMAZON SERVICES BUSINESS SOLUTIONS AGREEMENT (THE "**AGREEMENT**") CONTAINS THE TERMS AND CONDITIONS THAT GOVERN YOUR ACCESS TO AND USE OF THE SERVICES AND IS AN AGREEMENT BETWEEN YOU OR THE BUSINESS YOU REPRESENT AND AMAZON. BY REGISTERING FOR OR USING THE SERVICES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE SERVICE TERMS AND PROGRAM POLICIES THAT APPLY FOR EACH COUNTRY FOR WHICH YOU REGISTER OR ELECT TO USE A SERVICE (IN EACH CASE, THE "**ELECTED COUNTRY**").

As used in this Agreement, "**we**," "**us**," and "**Amazon**" means the applicable Amazon Contracting Party and any of its applicable Affiliates, and "**you**" means the applicant (if registering for or using a Service as an individual), or the business employing the applicant (if registering for or using a Service as a business) and any of its Affiliates. Capitalized terms have the meanings given to them in this Agreement. If there is any conflict between these General Terms and the applicable Service Terms and Program Policies, the General Terms will govern and the applicable Service Terms will prevail over the Program Policies.

#### 1. Enrollment.

To begin the enrollment process, you must complete the registration process for one or more of the Services. Use of the Services is limited to parties that can lawfully enter into and form contracts under applicable Law (for example, the Elected Country may not allow minors to use the Services). As part of the application, you must provide us with your (or your business') legal name, address, phone number and e-mail address, as well as any other information we may



request. Any personal data you provide to us will be handled in accordance with Amazon's [Privacy Notice](#).

**2. Service Fee Payments; Receipt of Sales Proceeds.**

Fee details are described in the applicable Service Terms and Program Policies. You are responsible for all of your expenses in connection with this Agreement. To use a Service, you must provide us with valid credit card information from a credit card or credit cards acceptable by Amazon ("**Your Credit Card**") as well as valid bank account information for a bank account or bank accounts acceptable by Amazon (conditions for acceptance may be modified or discontinued by us at any time without notice) ("**Your Bank Account**"). You will use only a name you are authorized to use in connection with a Service and will update all of the information you provide to us in connection with the Services as necessary to ensure that it at all times remains accurate, complete, and valid. You authorize us (and will provide us documentation evidencing your authorization upon our request) to verify your information (including any updated information), to obtain credit reports about you from time to time, to obtain credit authorizations from the issuer of Your Credit Card, and to charge Your Credit Card or debit Your Bank Account for any sums payable by you to us (in reimbursement or otherwise). All payments to you will be remitted to Your Bank Account through a banking network or by other means specified by us.

If we determine that your actions or performance may result in returns, chargebacks, claims, disputes, violations of our terms or policies, or other risks to Amazon or third parties, then we may in our sole discretion withhold **any payments to you for as long as** we determine any related risks to Amazon or third parties persist. For any amounts that we determine you owe us, we may (a) charge Your Credit Card or any other payment instrument you provide to us; (b) offset any amounts that are payable by you to us (in reimbursement or otherwise) against any payments we may make to you or amounts we may owe you; (c) invoice you for amounts due to us, in which case you will pay the invoiced amounts upon receipt; (d) reverse any credits to Your Bank Account; or (e) collect payment or reimbursement from you by any other lawful means. If we determine that your account—or any other account you have operated—has been used to engage in deceptive, fraudulent, or illegal activity (including the sale of counterfeit goods), or to repeatedly violate our Program Policies, then we may in our sole discretion permanently withhold any payments to you. Except as provided otherwise, all amounts contemplated in this Agreement will be expressed and displayed in the Local Currency, and all payments contemplated by this Agreement will be made in the Local Currency.

In addition, we may require that you pay other amounts to secure the performance of your obligations under this Agreement or to mitigate the risk of returns, chargebacks, claims, disputes, violations of our terms or policies, or other risks to Amazon or third parties. These amounts may be refundable or nonrefundable in the manner we determine, and failure to comply with terms of this Agreement, including any applicable Program Policies, may result in their forfeiture.

As a security measure, we may, but are not required to, impose transaction limits on some or all customers and sellers relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time. We will not be liable to you: (i) if we do not proceed with a transaction or disbursement that would exceed any limit established by us for a security reason, or (ii) if we permit a customer to withdraw from a transaction because an Amazon Site or Service is unavailable following the commencement of a transaction.

### 3. Term and Termination.

The term of this Agreement will start on the date of your completed registration for use of a Service and continue until terminated by us or you as provided below. You may at any time terminate your account or this Agreement immediately on notice to us via Seller Central, email, the Contact Us form, or similar means. We may terminate your account or this Agreement for convenience with 30 days' advance notice. We may suspend or terminate your account or this Agreement immediately if we determine that (a) you have materially breached the Agreement and failed to cure within 7 days of a cure notice unless your breach exposes us to liability toward a third party, in which case we are entitled to reduce, or waive, the aforementioned cure period at our reasonable discretion; (b) your account has been, or our controls identify that it may be used for deceptive or fraudulent, or illegal activity; or (c) your use of the Services has harmed, or our controls identify that it might harm, other sellers, customers, or Amazon's legitimate interests. We will promptly notify you of any such termination or suspension via email or similar means including Seller Central, indicating the reason and any options to appeal, except where we have reason to believe that providing this information will hinder the investigation or prevention of deceptive, fraudulent, or illegal activity, or will enable you to circumvent our safeguards. On termination of this Agreement, all related rights and obligations under this Agreement immediately terminate, except that (d) you will remain responsible for performing all of your obligations in connection with transactions entered into before termination and for any liabilities that accrued before or as a result of termination, and (e) Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 14, 15, and 18 of these General Terms survive.

### 4. License.

You grant us a royalty-free, non-exclusive, worldwide right and license for the duration of your original and derivative intellectual property rights to use any and all of Your Materials for the Services or other Amazon product or service, and to sublicense the foregoing rights to our Affiliates and operators of Amazon Associated Properties; provided, however, that we will not alter any of Your Trademarks from the form provided by you (except to re-size trademarks to the extent necessary for presentation, so long as the relative proportions of such trademarks remain the same) and will comply with your removal requests as to specific uses of Your Materials (provided you are unable to do so using standard functionality made available to you via the applicable Amazon Site or Service); provided further, however, that nothing in this Agreement will prevent or impair our right to use Your Materials without your consent to the extent that such use is allowable without a license from you or your Affiliates under applicable Law (e.g., fair use under United States copyright law, referential use under trademark law, or valid license from a third party).

#### 5. **Representations.**

Each party represents and warrants that: (a) if it is a business, it is duly organized, validly existing and in good standing under the Laws of the country in which the business is registered and that you are registering for the Service(s) within such country; (b) it has all requisite right, power, and authority to enter into this Agreement, perform its obligations, and grant the rights, licenses, and authorizations in this Agreement; (c) any information provided or made available by one party to the other party or its Affiliates is at all times accurate and complete; (d) it is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the US Government (e.g., the US Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list and the US Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority; and (e) it will comply with all applicable Laws in performance of its obligations and exercise of its rights under this Agreement.

#### 6. **Indemnification.**

**6.1 Your indemnification obligations.** You will defend, indemnify, and hold harmless Amazon, and our officers, directors, employees, and agents, against any third-party claim, loss, damage, settlement, cost, expense, or other liability (including, without limitation, attorneys' fees) (each, a "Claim") arising from or related to (a) your non-compliance with applicable Laws; (b) Your Products, including the offer, sale, fulfillment (except to the extent attributable to the FBA service), refund, cancellation, return, or adjustments thereof, Your Materials, any actual or alleged infringement of any Intellectual Property Rights by any of the foregoing, and any

personal injury, death (to the extent the injury or death is not caused by Amazon), or property damage related thereto; (c) Your Taxes and duties or the collection, payment, or failure to collect or pay Your Taxes or duties, or the failure to meet tax registration obligations or duties; or (d) actual or alleged breach of any representations you have made.

**6.2 Amazon's indemnification obligations.** Amazon will defend, indemnify, and hold harmless you and your officers, directors, employees, and agents against any third-party Claim arising from or related to: (a) Amazon's non-compliance with applicable Laws; or (b) allegations that the operation of an Amazon Site infringes or misappropriates that third party's intellectual property rights.

**6.3 Process.** If any indemnified Claim might adversely affect us, we may, to the extent permitted by applicable Law, voluntarily intervene in the proceedings at our expense. No party may consent to the entry of any judgment or enter into any settlement of an indemnified Claim without the prior written consent of the other party, which may not be unreasonably withheld; except that a party may settle any claim that is exclusively directed at and exclusively affects that party.

## **7. Disclaimer & General Release.**

a. THE AMAZON SITES AND THE SERVICES, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, AND INFORMATION MADE AVAILABLE ON OR PROVIDED IN CONNECTION WITH THE SERVICES, ARE PROVIDED "AS-IS." AS A USER OF THE SERVICES, YOU USE THE AMAZON SITES, THE SERVICES, AND SELLER CENTRAL AT YOUR OWN RISK. EXCEPT THOSE SET FORTH IN SECTION 5 ABOVE, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE AND OUR AFFILIATES DISCLAIM: (i) ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT, THE SERVICES OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT; (ii) IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (iii) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM OUR NEGLIGENCE. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE AMAZON SITES AND THE SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE, TIMELY, SECURE, UNINTERRUPTED, OR ERROR FREE, AND WE WILL NOT BE LIABLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING BUT NOT LIMITED TO SYSTEM FAILURES OR OTHER INTERRUPTIONS

THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION, OR SETTLEMENT OF ANY TRANSACTIONS.

b. BECAUSE AMAZON IS NOT INVOLVED IN TRANSACTIONS BETWEEN CUSTOMERS AND SELLERS OR OTHER PARTICIPANT DEALINGS, IF A DISPUTE ARISES BETWEEN ONE OR MORE PARTICIPANTS, EACH PARTICIPANT RELEASES AMAZON (AND ITS AGENTS AND EMPLOYEES) FROM CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

8. **Limitation of Liability.**

WE WILL NOT BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY, OR OTHER THEORY), OR OTHERWISE) TO YOU OR ANY OTHER PERSON FOR COST OF COVER, RECOVERY, OR RECOUPMENT OF ANY INVESTMENT MADE BY YOU OR YOUR AFFILIATES IN CONNECTION WITH THIS AGREEMENT, OR FOR ANY LOSS OF PROFIT, REVENUE, BUSINESS, OR DATA OR PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF AMAZON HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE COSTS OR DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED WILL NOT EXCEED AT ANY TIME THE TOTAL AMOUNTS DURING THE PRIOR SIX MONTH PERIOD PAID BY YOU TO AMAZON IN CONNECTION WITH THE PARTICULAR SERVICE GIVING RISE TO THE CLAIM.

9. **Insurance.**

If the gross proceeds from Your Transactions exceed the applicable Insurance Threshold during any month if the Elected Country is the United States, or each month over any period of three (3) consecutive months if the Elected Country is Canada or Mexico, or otherwise if requested by us, then within thirty (30) days thereafter, you will maintain at your expense throughout the remainder of the Term for each applicable Elected Country commercial general, umbrella or excess liability insurance with the Insurance Limits per occurrence and in aggregate covering liabilities caused by or occurring in conjunction with the operation of your business, including products, products/completed operations and bodily injury, with policy(ies) naming Amazon and its assignees as additional insureds. At our request, you will provide to us certificates of insurance, the full insurance policy, or other documents we may request for the coverage to the

following address: c/o Amazon, P.O. Box 81226, Seattle, WA 98108-1226, Attention: Risk Management.

**10. Tax Matters.**

As between the parties, you will be responsible for the collection, reporting, and payment of any and all of Your Taxes, except to the extent that (i) Amazon automatically calculates, collects, or remits taxes on your behalf according to applicable law; or (ii) Amazon expressly agrees to receive taxes or other transaction-based charges on your behalf in connection with tax calculation services made available by Amazon and used by you. You agree to and will comply with the [Tax Policies](#). All fees and payments payable by you to Amazon under this Agreement or the applicable Service Terms are exclusive of any applicable taxes, deductions or withholding (including but not limited to cross-border withholding taxes), and you will be responsible for paying Amazon any of Your Taxes imposed on such fees and any deduction or withholding required on any payment.

**11. Confidentiality and Personal Data.**

During the course of your use of the Services, you may receive Confidential Information. You agree that for the term of the Agreement and 5 years after termination: (a) all Confidential Information will remain Amazon's exclusive property; (b) you will use Confidential Information only as is reasonably necessary for your participation in the Services; (c) you will not otherwise disclose Confidential Information to any other Person except as required to comply with the Law; (d) you will take all reasonable measures to protect the Confidential Information against any use or disclosure that is not expressly permitted in this Agreement; and (e) you will retain Confidential Information only for so long as its use is necessary for participation in the Services or to fulfill your statutory obligations (e.g. tax) and in all cases will delete such information upon termination or as soon as no longer required for the fulfillment of statutory obligations. The foregoing sentence does not restrict your right to share Confidential Information with a governmental entity that has jurisdiction over you, provided that you limit the disclosure to the minimum necessary and explicitly indicate the confidential nature of the shared information to the governmental entity. You may not issue any press release or make any public statement related to the Services, or use our name, trademarks, or logo, in any way (including in promotional material) without our advance written permission, or misrepresent or embellish the relationship between us in any way. You may only use the "Available at Amazon" badge as defined in and according to the [Trademark Usage Guidelines](#) available in Seller Central; you may not use our name, trademarks, or logos in any way (including in promotional material) not covered by the Trademark Usage Guidelines without our advance written permission.



Generally, you may not use customer personal data in any way inconsistent with applicable Law. You must keep customer personal data confidential at all times (the above 5 years' term limit does not apply to customer personal data).

**12. Force Majeure.**

We will not be liable for any delay or failure to perform any of our obligations under this Agreement by reasons, events or other matters beyond our reasonable control.

**13. Relationship of Parties.**

Subject to the Transaction Processing Service Terms (if the Elected Country for a Service is the United States), you and we are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf. This Agreement will not create an exclusive relationship between you and us. Nothing expressed or mentioned in or implied from this Agreement is intended or will be construed to give to any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions, and provisions in this Agreement are intended to be and are for the sole and exclusive benefit of Amazon, you, and customers. As between you and us, you will be solely responsible for all obligations associated with the use of any third party service or feature that you permit us to use on your behalf, including compliance with any applicable terms of use. You will not make any statement, whether on your site or otherwise, that would contradict anything in this section.

**14. Suggestions and Other Information.**

If you or any of your Affiliates elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to us in connection with or related to any Amazon Site or Service (including any related Technology), we will be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in any manner. In order to cooperate with governmental requests, to protect our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information we consider necessary or appropriate, including but not limited to user contact details, IP addresses and traffic information, usage history, and posted content. If we make suggestions on using the Services, you are responsible for any actions you take based on our suggestions.

**15. Modification.**

15.1. We will provide at least 15 days' advance notice in accordance with Section 18 for changes to the Agreement.

15.2 However, we may change or modify the Agreement at any time with immediate effect (a) for legal, regulatory, fraud and abuse prevention, or security reasons; (b) to change existing features or add additional features to the Services (where this does not materially adversely affect your use of the Services); or (c) to restrict products or activities that we deem unsafe, inappropriate, or offensive. We will notify you about any change or modification in accordance with Section 18.

15.3 Your continued use of the Services after the effective date of any change to this Agreement in accordance with this Section 15 will constitute your acceptance of that change. If any change is unacceptable to you, you agree not to use the Services and to end the Agreement as described in Section 3.

#### 16. Password Security.

Any password we provide to you may be used only during the Term to access Seller Central (or other tools we provide, as applicable) to use the Services, electronically accept Your Transactions, and review your completed transactions. You are solely responsible for maintaining the security of your password. You may not disclose your password to any third party (other than third parties authorized by you to use your account in accordance with this Agreement) and are solely responsible for any use of or action taken under your password. If your password is compromised, you must immediately change your password.

#### 17. Export.

You will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any commodities, software or technology to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the United Nations, US Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority.

#### 18. Miscellaneous.

The Governing Laws will govern this Agreement, without reference to rules governing choice of laws or the Convention on Contracts for the International Sale of Goods. If the Elected Country is the United States, Canada, or Mexico, **Amazon and you both consent that any dispute with Amazon or its Affiliates or claim relating in any way to this Agreement or your use of the Services will be resolved by binding arbitration as described in this paragraph, rather than**



**in court**, except that (i) you may assert claims in a small claims court that is a Governing Court if your claims qualify; (ii) you or we may bring suit in the Governing Courts, submitting to the jurisdiction of the Governing Courts and waiving our respective rights to any other jurisdiction, to enjoin infringement or other misuse of intellectual property rights; and (iii) we may bring any claims related to your sale of counterfeit products on the Amazon Site in the Governing Courts and seek any remedy available under law related to those claims. **There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would.** Before you may begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent, CSC 300 Deschutes Way SW, Suite 208 MC-CSC1, Tumwater, WA 98501. The arbitration will be conducted by the American Arbitration Association (AAA) under its commercial rules. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. **We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous.** The expedited procedures of the AAA's rules will apply only in cases seeking **exclusively monetary relief under \$50,000**, and in such cases the hearing will be scheduled to take place **within 90 days of the arbitrator's appointment**. Likewise, Amazon will not seek attorneys' fees and costs from you in arbitration unless the arbitrator determines the claims are frivolous. **You may choose to have the arbitration conducted by telephone, based on written submissions, or in person at a mutually agreed location.** **Amazon and you each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a claim proceeds in court rather than in arbitration **Amazon and you each waive any right to a jury trial.**

You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Any attempt to assign or otherwise transfer in violation of this section is void; provided, however, that upon notice to Amazon, you may assign or transfer this Agreement, in whole or in part, to any of your Affiliates as long as you remain liable for your obligations that arose prior to the effective date of the assignment or transfer under this Agreement. You agree that we may assign or transfer our rights and obligations under this Agreement: (a) in connection with a merger, consolidation, acquisition or sale of all or substantially all of our assets or similar transaction; or (b) to any Affiliate or as part of a corporate reorganization; and effective upon such assignment, the assignee is deemed substituted for Amazon as the party to this Agreement. Subject to that restriction, this Agreement will be binding on, inure to, and be enforceable against the parties and their respective successors and assigns. We may perform any of our obligations or

exercise any of our rights under this Agreement through one or more of our Affiliates. Amazon retains the right to immediately halt any of Your Transactions, prevent or restrict access to the Services or take any other action to restrict access to or availability of any inaccurate listing, any inappropriately categorized items, any unlawful items, or any items otherwise prohibited by applicable Program Policies. Because Amazon is not your agent (except for the limited purpose set out in the Transaction Processing Service Terms (if the Elected Country for a Service is the United States)), or the customer's agent for any purpose, Amazon will not act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction.

Amazon will provide notice to you under this Agreement by posting changes to Seller Central or to the applicable Amazon Services site to which the changes relate (such as the Developer Site accessible through your account), by sending you an email notification, or by similar means. You must send all notices and other communications relating to Amazon to our Selling Partner Support team via Seller Central, email, the Contact Us form, or similar means. We may also communicate with you electronically and in other media, and you consent to such communications. You may change your e-mail addresses and certain other information in Seller Central, as applicable. You will ensure that all of your information is up to date and accurate at all times.

If any provision of this Agreement is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these terms and conditions and will not affect the validity and enforceability of any remaining provisions. If the Elected Country is Canada, then it is the express wish of the parties that this Agreement and the applicable Service Terms and Program Policies have been drafted in English. (The following is a French translation of the preceding sentence: Si le pays de service est le Canada, les parties conviennent que la présente autorisation et tous les termes et conditions applicables s'y rattachant soient rédigés en anglais.) We may make available translations to this Agreement and the applicable Service Terms and Program Policies, but the English version will control. This Agreement represents the entire agreement between the parties with respect to the Services and related subject matter and supersedes any previous or contemporaneous oral or written agreements and understandings.

## Definitions

As used in this Agreement, the following terms have the following meanings:

**"Affiliate"** means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with that entity.

"Amazon Associated Properties" means any website or other online point of presence, mobile application, service or feature, other than an Amazon Site, through which any Amazon Site, or products or services available on any of them, are syndicated, offered, merchandised, advertised, or described.

"Amazon Contracting Party" means the party outlined below.

- If the Elected Country is Canada:

Service	Amazon Contracting Party
Selling on Amazon	Amazon.com.ca, Inc.
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon.com.ca, Inc.
Fulfillment by Amazon	Amazon.com.ca, Inc.
Amazon Advertising	Amazon Advertising Canada, Inc.

- If the Elected Country is Mexico:

Service	Amazon Contracting Party
Selling on Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.
Fulfillment by Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.
Amazon Advertising	Servicios Comerciales Amazon México S. de R.L. de C.V.

- If the Elected Country is the United States:

Service	Amazon Contracting Party
Selling on Amazon	Amazon.com Services LLC
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon.com Services LLC
Fulfillment by Amazon	Amazon.com Services LLC
Amazon Advertising	Amazon.com Services LLC
Transaction Processing Services	Amazon Payments, Inc., Amazon

	Capital Services, Inc., or Amazon.com Services LLC, according to the Transaction Processing Services Terms
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If you register for or use the Selling Partner API, the Amazon Contracting Party is the Contracting Party that provides the applicable Service you use in connection with the Selling Partner API.

**"Amazon Site"** means, as applicable, the CA Amazon Site, the MX Amazon Site, or the US Amazon Site.

**"CA Amazon Site"** means the website, the primary home page of which is identified by the url [www.amazon.ca](http://www.amazon.ca), and any successor or replacement of such website.

**"Confidential Information"** means information relating to us, to the Services, or Amazon customers that is not known to the general public including, but not limited to, any information identifying or unique to specific customers; reports, insights, and other information about the Services; data derived from the Services except for data (other than customer personal data) arising from the sale of your products comprising of products sold, prices, sales, volumes and time of the transaction; and technical or operational specifications relating to the Services. For the purposes of this Agreement, customer personal data constitutes Confidential Information at all times.

**"Content"** means copyrightable works under applicable Law and content protected by database rights under applicable Law.

**"Excluded Products"** means the items described on the applicable [Restricted Products pages](#) in Seller Central, any other applicable Program Policy, or any other information made available to you by Amazon.

**"Governing Courts"** means the applicable one of the following:

- the state or Federal court in King County, Washington (if the Elected Country is Canada, Mexico, or the United States),

**"Governing Laws"** means the applicable one of the following:

- the laws of the State of Washington, United States together with the Federal Arbitration Act and other applicable federal law (if the Elected Country is Canada, Mexico, or the United States),

**"Insurance Limits"** means the applicable one of the following:

- One Million Canadian Dollars (\$1,000,000) (if the Elected Country is Canada),
- Ten Million Mexican Pesos (\$10,000,000) (if the Elected Country is Mexico),
- One Million U.S. Dollars (\$1,000,000) (if the Elected Country is the United States).

**"Insurance Threshold"** means the applicable one of the following:

- Ten Thousand Canadian Dollars (\$10,000) (if the Elected Country is Canada),
- One Hundred Thousand Mexican Pesos (\$100,000) (if the Elected Country is Mexico),
- Ten Thousand U.S. Dollars (\$10,000) (if the Elected Country is the United States).

**"Intellectual Property Right"** means any patent, copyright, Trademark, domain name, moral right, trade secret right, or any other intellectual property right arising under any Laws and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing.

**"Law"** means any law, ordinance, rule, regulation, order, license, permit, judgment, decision, or other requirement, now or in the future in effect, of any governmental authority (e.g., on a federal, state, or provincial level, as applicable) of competent jurisdiction.

**"Local Currency"** means the applicable one of the following:

- U.S. Dollars (if the Elected Country is the United States),
- Canadian Dollars (if the Elected Country is Canada),
- Mexican Pesos (if the Elected Country is Mexico),

**"MX Amazon Site"** means the website, the primary home page of which is identified by the url [www.amazon.com.mx](http://www.amazon.com.mx), and any successor or replacement of such website.

**"Optional Coverage Plans"** means warranties, extended service plans and related offerings, in each case as determined by us, that you offer.

**"Order Information"** means, with respect to any of Your Products ordered through an Amazon Site, the order information and shipping information that we provide or make available to you.

**"Person"** means any individual, corporation, partnership, limited liability company, governmental authority, association, joint venture, division, or other cognizable entity, whether or not having distinct legal existence.

**"Program Policies"** means all policies and program terms provided on the [Program Policies](#) page.

**"Sales Proceeds"** means the gross proceeds from any of Your Transactions, including (a) all shipping and handling, gift wrap and other charges; (b) taxes and customs duties to the extent

specified in the applicable [Tax Policies](#); and (c) in the case of invoiced orders, any amounts that customers fail to pay to us or our Affiliates on or before the applicable invoice due date.

**"Seller Central"** means the online portal and tools made available by Amazon to you, for your use in managing your orders, inventory, and presence on a particular Amazon Site or any other online point of presence.

**"Service"** means each of the following services: Selling on Amazon, Fulfillment by Amazon, Amazon Advertising (including Amazon Sponsored Products), the Selling Partner APIs, and, if the Elected Country for a Service is the United States, the Transaction Processing Services, together in each case with any related services and materials we make available.

**"Service Terms"** means the service terms applicable to each Service, which are made part of this Agreement upon the date you elect to register for or use the applicable Service, and any subsequent modifications we make to those terms.

**"Technology"** means any: (a) ideas, procedures, processes, systems, methods of operation, concepts, principles, and discoveries protected or protectable under the Laws of any jurisdiction; (b) interfaces, protocols, glossaries, libraries, structured XML formats, specifications, grammars, data formats, or other similar materials; and (c) software, hardware, code, technology, or other functional item.

**"Trademark"** means any trademark, service mark, trade dress (including any proprietary "look and feel"), trade name, other proprietary logo or insignia, or any other source or business identifier, protected or protectable under any Laws.

**"US Amazon Site"** means that website, the primary home page of which is identified by the URL [www.amazon.com](http://www.amazon.com), and any successor or replacement of such website.

**"Your Materials"** means all Technology, Your Trademarks, Content, Your Product information, data, materials, and other items or information provided or made available by you or your Affiliates to Amazon or its Affiliates.

**"Your Personnel"** means any third party warranting, administering or otherwise involved in the offer, sale, performance, or fulfillment of Your Products, including any of your employees, representatives, agents, contractors, or subcontractors.

**"Your Product"** means any product or service (including Optional Coverage Plans) that you: (a) have offered through the Selling on Amazon Service; (b) have made available for advertising



through the Amazon Advertising Service; or (c) have fulfilled or otherwise processed through the Fulfillment by Amazon Service.

**"Your Sales Channels"** means all sales channels and other means through which you or any of your Affiliates offers products or services, other than physical stores.

**"Your Taxes"** means any and all sales, goods and services, use, excise, premium, import, export, value added, consumption, and other taxes, regulatory fees, levies (specifically including environmental levies), or charges and duties assessed, incurred, or required to be collected or paid for any reason (a) in connection with any advertisement, offer or sale of products or services by you on or through or in connection with the Services; (b) in connection with any products or services provided for which Your Products are, directly or indirectly, involved as a form of payment or exchange; or (c) otherwise in connection with any action, inaction, or omission of you or your Affiliates, or any Persons providing products or services, or your or their respective employees, agents, contractors, or representatives, for which Your Products are, directly or indirectly, involved as a form of payment or exchange. Also, if the Elected Country is the United States, Mexico, or Canada as it is used in the Fulfillment by Amazon Service Terms, this defined term also means any of the types of taxes, duties, levies, or fees mentioned above that are imposed on or collectible by Amazon or any of its Affiliates in connection with or as a result of fulfillment services including the storage of inventory or packaging of Your Products and other materials owned by you and stored by Amazon, shipping, gift wrapping, or other actions by Amazon in relation to Your Products pursuant to the Fulfillment by Amazon Service Terms.

**"Your Trademarks"** means Trademarks of yours that you provide to us: (a) in non-text form for branding purposes; and (b) separate from (and not embedded or otherwise incorporated in) any product specific information or materials.

**"Your Transaction"** means any sale of Your Product(s) through an Amazon Site.

### **Selling on Amazon Service Terms**

The Selling on Amazon Service ("**Selling on Amazon**") is a Service that allows you to offer certain products and services directly on the Amazon Sites.

These Selling on Amazon Service Terms are part of the Agreement, but, unless specifically provided otherwise, concern and apply only to your participation in Selling on Amazon. BY REGISTERING FOR OR USING THE SELLING ON AMAZON SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE [AGREEMENT](#), INCLUDING THESE SELLING ON AMAZON SERVICE

TERMS. NOTWITHSTANDING THE PREVIOUS SENTENCE, IF YOU HAVE ENTERED INTO A SEPARATE AGREEMENT THAT PERMITS YOU TO OFFER YOUR PRODUCTS THROUGH A PARTICULAR AMAZON SITE (E.G., A MERCHANTS@AMAZON.COM PROGRAM AGREEMENT, MERCHANTS@AMAZON.CO.JP PROGRAM AGREEMENT OR ANY PREDECESSOR OF THOSE AGREEMENTS), THEN TO THE EXTENT THAT YOU CONTINUE TO LIST AND SELL YOUR PRODUCTS ON THAT AMAZON SITE PURSUANT TO SUCH SEPARATE AGREEMENT, TRANSACTIONS OF YOUR PRODUCTS ON THAT AMAZON SITE AND ANY TAX SERVICES WE MAKE AVAILABLE UNDER THAT AGREEMENT ARE GOVERNED BY THE TERMS OF THAT AGREEMENT AND NOT BY THESE SELLING ON AMAZON SERVICE TERMS.

#### **S-1 Your Product Listings and Orders.**

**S-1.1 Products and Product Information.** You will provide accurate and complete Required Product Information for each product or service that you offer through any Amazon Site and promptly update that information as necessary to ensure it at all times remains accurate and complete. You will also ensure that Your Materials, Your Products (including packaging) and your offer and subsequent sale of any of the same on any Amazon Site comply with all applicable Laws (including all minimum age, marking and labeling requirements) and do not contain any sexually explicit (except to the extent expressly permitted under our applicable Program Policies), defamatory or obscene materials. You may not provide any information for, or otherwise seek to offer any Excluded Products on any Amazon Sites; or provide any URL Marks for use, or request that any URL Marks be used, on any Amazon Site. If you offer a product for sale on an Amazon Site that requires a warning under California Health & Safety Code Section 25249.6 (a “Proposition 65 Warning”) you (a) will provide us with such warning in the manner specified in our Program Policies, (b) agree that our display of a Proposition 65 Warning on a product detail page is confirmation of our receipt of that warning, and (c) will only revise or remove a Proposition 65 Warning for a product when the prior warning is no longer legally required.

**S-1.2 Product Listing; Merchandising; Order Processing.** We will enable you to list Your Products on a particular Amazon Site, and conduct merchandising and promote Your Products in accordance with the Agreement (including via the Amazon Associated Properties or any other functions, features, advertising, or programs on or in connection with the applicable Amazon Site). We may use mechanisms that rate, or allow shoppers to rate, Your Products and your performance as a seller and Amazon may make these ratings and feedback publicly available.



We will provide Order Information to you for each order of Your Products through the applicable Amazon Site. We will also receive all Sales Proceeds on your behalf for each of these transactions and will have exclusive rights to do so, and will remit them to you in accordance with these Selling on Amazon Service Terms. We may permit certain customers to place invoiced orders for Your Products, in which case remittance of Sales Proceeds may be delayed according to each customer's invoicing terms. You will accept and fulfill invoiced orders in the same manner as you accept and fulfill non-invoiced orders, except as otherwise provided in this Agreement.

**S-1.3 Shipping and Handling Charges.** For Your Products ordered by customers on or through an Amazon Site that are not fulfilled using Fulfillment by Amazon, you will determine the shipping and handling charges subject to our Program Policies and standard functionality (including any category-based shipping and handling charges we determine, such as for products offered by sellers on the Individual selling plan and BMVD Products generally). When we determine the shipping and handling charges, you will accept them as payment in full for your shipping and handling. Please refer to the Fulfillment by Amazon Service Terms for Your Products that are fulfilled using Fulfillment by Amazon.

**S-1.4 Credit Card Fraud and Unpaid Invoices.** We will bear the risk of (a) credit card fraud (i.e., a fraudulent purchase arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions, and (b) late payments or defaults by customers in connection with invoiced orders for Your Products, except, in each case, in connection with Seller-Fulfilled Products that are not fulfilled strictly in accordance with the Order Information and Shipment Information. You will bear all other risk of fraud or loss.

## **S-2 Sale and Fulfillment; Refunds and Returns.**

**S-2.1 Sale and Fulfillment.** Other than as described in the Fulfillment by Amazon Service Terms for each Amazon Site for which you decide to register or use the Selling on Amazon Service, you will: (a) source, offer, sell, and fulfill your Seller-Fulfilled Products, and source, offer, and sell your Amazon-Fulfilled Products, in each case in accordance with the terms of the applicable Order Information, this Agreement, and all terms provided by you or us and displayed on the applicable Amazon Site at the time of the order and be solely responsible for and bear all risk for those activities; (b) package each of Your Products in a commercially reasonable manner complying with all applicable packaging and labeling requirements, including any warnings or instructions necessary to safely use Your Products, and ship each of Your Products on or before its Expected Ship Date; (c) retrieve Order Information at least once each business day; (d) only

cancel Your Transactions as permitted pursuant to your terms and conditions appearing on the applicable Amazon Site at the time of the applicable order or as may be required under this Agreement; (e) fulfill Your Products throughout the Elected Country (except to the extent prohibited by Law or this Agreement); (f) provide to Amazon information regarding fulfillment and order status and tracking (to the extent available), in each case as requested by us using the processes designated by us, and we may make any of this information publicly available; (g) comply with all Street Date instructions; (h) ensure that you are the seller of each of Your Products; (i) include an order-specific packing slip, and, if applicable, any tax invoices, within each shipment of Your Products; (j) identify yourself as the seller of each of Your Products on all packing slips or other information included or provided in connection with Your Products and as the Person to which a customer may return the applicable product; and (k) not send customers emails confirming orders or fulfillment of Your Products. If any of Your Products are fulfilled using Fulfillment by Amazon, the Fulfillment by Amazon Service Terms for the applicable Amazon Site will apply to the storage, fulfillment, and delivery of such Amazon-Fulfilled Products.

**S-2.2 Cancellations, Returns, and Refunds.** The Amazon Refund Policies for the applicable Amazon Site will apply to Your Products. Subject to Section F-6, for any of Your Products fulfilled using Fulfillment by Amazon, you will promptly accept, calculate, and process cancellations, returns, refunds, and adjustments in accordance with this Agreement and the Amazon Refund Policies for the applicable Amazon Site, using functionality we enable for your account. Without limiting your obligations, we may in our sole discretion accept, calculate, and process cancellations, returns, refunds, and adjustments for the benefit of customers. You will route any payments to customers in connection with Your Transactions through Amazon. We will make any payments to customers in the manner we determine, and you will reimburse us for all amounts we pay.

### **S-3 Problems with Your Products.**

**S-3.1 Delivery Errors and Nonconformities; Recalls.** You are responsible for any non-performance, non-delivery, misdelivery, theft, or other mistake or act in connection with the fulfillment of Your Products, except to the extent caused by: (a) credit card fraud for which we are responsible under Section S-1.4; or (b) our failure to make available to you Order Information as it was received by us or resulting from address verification. Notwithstanding the previous sentence, for those of Your Products that are fulfilled using Fulfillment by Amazon, if any, the Fulfillment by Amazon Service Terms for the applicable Amazon Site will apply to non-delivery, misdelivery, theft, or other mistake or act in connection with the fulfillment of those of

Your Products. You are also responsible for any non-conformity or defect in, any public or private recall of, or safety alert of any of Your Products or other products provided in connection with Your Products. You will notify us promptly as soon as you have knowledge of any public or private recalls, or safety alerts of Your Products or other products provided in connection with Your Products.

**S-3.2 A-to-z Guarantee and Chargebacks if the Elected Country is Canada or Mexico.** If we inform you that we have received or initiated a claim under the "A-to-z Guarantee" offered on a particular Amazon Site or other dispute relating to the offer, sale or fulfillment of Your Products (other than a chargeback), concerning one of Your Transactions, you will have 30 days to appeal our decision of the claim. If we find that a claim, chargeback, or dispute is your responsibility, you (a) will not take recourse against the customer, and (b) are responsible for reimbursing us in accordance with the [Service Fee Payments section of this Agreement](#) for the amount paid by the customer (including taxes and shipping and handling charges, but excluding any Referral Fees that we retained as defined in Section S-4), and all other fees and expenses associated with the original transaction (such as credit card, bank, payment processing, re-presentment, or penalty fees) and any related chargebacks or refunds, to the extent payable by us.

**S-3.3 A-to-z Guarantee, A-to-z Claims Process, and Chargebacks if the Elected Country is the United States.** Claims that we receive or initiate under the "A-to-z Guarantee" or the "A-to-z Claims Process for Property Damage and Personal Injury" will be governed by the Program Policy for such claims.

If we find that any claim, chargeback, or dispute is your responsibility, (i) you will not take recourse against the customer, and (ii) if Amazon resolves the claim directly with the customer and does not waive its right of indemnification, you will reimburse us in accordance with Section 2 of this Agreement to the extent of your responsibility (not to exceed the amount paid by Amazon to resolve the claim), including taxes and shipping and handling charges (but excluding any Referral Fees that we retained as defined in Section S-4), and all other fees and expenses associated with the original transaction (such as credit card, bank, payment processing, re-presentment, or penalty fees) and any related chargebacks or refunds.

#### **S-4 Compensation.**

You will pay us: (a) the applicable Referral Fees; (b) any applicable Variable Closing Fee; (c) the non-refundable Selling on Amazon Subscription Fee in advance each month; and (d) any other applicable fees described in this Agreement (including any applicable Program Policies). "Selling on Amazon Subscription Fee" means the fee specified as such on the

Selling on Amazon [Fee Schedule](#) for the applicable Amazon Site at the time such fee is payable. With respect to each of Your Transactions: (i) "**Sales Proceeds**" has the meaning set out in this Agreement; (ii) "**Variable Closing Fee**" means the applicable fee, if any, as specified on the [Variable Closing Fee Schedule](#) for the applicable Amazon Site; and (iii) "**Referral Fee**" means the applicable fee based on the Sales Proceeds from Your Transaction through the applicable Amazon Site specified on the Selling on Amazon [Fee Schedule](#) for that Amazon Site at the time of Your Transaction, based on the categorization by Amazon of the type of product that is the subject of Your Transaction; provided, however, that Sales Proceeds will not include any shipping charges set by us in the case of Your Transactions that consist solely of products fulfilled using Fulfillment by Amazon.

#### **S-5 Remittance of Sales Proceeds & Refunds.**

Except as otherwise stated in this Agreement, we will remit to you your available balance on a bi-weekly (14 day) (or at our option, more frequent) basis, which may vary for each Elected Country. For each remittance, your available balance is equal to any Sales Proceeds not previously remitted to you as of the applicable Remittance Calculation Date (which you will accept as payment in full for Your Transactions), less: (a) the Referral Fees; (b) the applicable Variable Closing Fee; (c) any Selling on Amazon Subscription Fees; (d) any other applicable fees described in this Agreement (including any applicable Program Policies); (e) any amounts we require you to maintain in your account balance pursuant to this Agreement (including payments withheld pursuant to [Section 2 of the General Terms](#), [Section S-1.4](#), [Section S-3.2](#), [Section S-3.3](#), and applicable Program Policies); and (f) any taxes that Amazon automatically calculates, collects and remits to a tax authority according to applicable law, as specified in the Tax Policies.

We may establish a reserve on your account based on our assessment of risks to Amazon or third parties posed by your actions or performance, and we may modify the amount of the reserve from time to time at our sole discretion.

When you either initially provide or later change Your Bank Account information, the Remittance Calculation Date may be deferred by up to 14 days. For sellers that registered after October 30, 2011 and are on the Individual selling plan, the remittance amount will not include Sales Proceeds from the 14-day period before the date of remittance. If you refund money to a customer in connection with one of Your Transactions, and the refund is routed through us (or our Affiliate), on the next available Remittance Calculation Date we will refund to you the amount of the Referral Fee paid by you to us attributable to the amount of the customer refund

(including refunded taxes and customs duties only to the extent specified in the applicable [Tax Policies](#)), less the Refund Administration Fee for each of Your Products refunded that is not a BMVD Product, which amount we may retain as an administrative fee; provided, however, that in the case of a complete refund of Sales Proceeds for a Media Product, we will refund to you the full amount of any Variable Closing Fee paid by you to us (and in the case of a partial refund of Sales Proceeds for a Media Product, we will not refund to you any portion of any Variable Closing Fee paid by you to us). We will remit any amounts to be refunded by us pursuant to this subsection from time to time together with the next remittance to be made by us to you. **“Refund Administration Fee”** means the applicable fee described on the [Refund Administration Fee Schedule](#) for the applicable Amazon Site.

Net Sales Proceeds from non-invoiced orders will be credited to your available balance when they are received by us or our Affiliates. Sales Proceeds from invoiced orders will be credited to your available balance: (a) if you have elected in advance to pay a fee to accelerate remittance of Sales Proceeds from invoiced orders, on the day all of Your Products included in an invoiced orders are shipped; or (b) otherwise, no later than the seventh day following the date that an invoiced order becomes due.

#### **S-6 Amazon’s Websites and Services.**

Amazon has the right to determine, the design, content, functionality, availability and appropriateness of its websites, selection, and any product or listing in the Amazon Stores, and all aspects of each Service, including your use of the same. Amazon may assign any of these rights or delegate any of its responsibilities.

#### **S-7 Continuing Guarantees**

Guarantees. We require the following continuing guarantees from you.

S-7.1 Pesticides. If any of Your Products is a “pesticide” being offered or sold in the United States or other product regulated under the US Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) or its implementing regulations, then you provide to us the following continuing guaranty that: (a) you are a resident of the United States; and (b) with respect to each such product, the pesticides and other FIFRA regulated products comprising each sale, shipment, or other delivery made previously or hereafter are: (i) lawfully registered with the US Environmental Protection Agency at the time of sale, shipment, or delivery, or fully qualified for a specific exemption from the FIFRA registration requirements at the time of sale, shipment, or

delivery, (ii) compliant with all requirements of FIFRA and its implementing regulations at the time of sale, shipment, or delivery, and (iii) provided by you in the original, unbroken packaging.

S-7.2 Foods, Drugs, Medical Devices, and Cosmetics. If any of Your Products is a “food”, “drug”, “medical device”, or “cosmetic” being offered or sold in the United States or other product regulated under the U.S. Federal Food, Drug, and Cosmetic Act (“FFDCA”) or its implementing regulations, then you provide us with the following continuing guaranty that with respect to all such products comprising each sale, shipment, or other delivery made previously or hereafter are: (i) not adulterated or misbranded within the meaning of the FFDCA, (ii) compliant with all requirements of FFDCA and its implementing regulations at the time of sale, shipment, or delivery, and (iii) provided by you in the original, unbroken packaging.

### **Selling on Amazon Definitions**

**"Amazon-Fulfilled Products"** means any of Your Products that are fulfilled using the Fulfillment by Amazon Service.

**"Amazon Refund Policies"** means the [return and refund policies](#) published on the applicable Amazon Site and applicable to products and services offered via that Amazon Site.

**"BMVD Product"** means any book, magazine or other publication, sound recording, video recording, and/or other media product in any format, including any subscription, in each case excluding any software product, computer game, and/or video game.

**"Excluded Offer"** means any discount, rebate, promotional offer, or other term of offer and/or sale that you: (a) have attempted to make available through a particular Amazon Site but that we do not honor or support (but only until such time as we honor or support the same on such Amazon Site); or (b) make available solely to third parties that either (i) purchase products solely for resale and who are not end users of such products (i.e., wholesale purchasers), or (ii) if the Elected Country is Canada, Mexico, or the United States, have affirmatively elected and opted-in to participate in your or one of your Affiliates' membership-based customer loyalty or customer incentive programs.

**"Expected Ship Date"** means, with respect to any of Your Products, either: (a) the end of the shipping availability period (which begins as of the date on which the relevant order is placed by the customer), or the shipping availability date, as applicable, specified by you in the relevant inventory/product data feed for Your Product; or (b) if you do not specify shipping availability information in such inventory/product data feed or that Your Product is in a product category



that Amazon designates as requiring shipment within two (2) business days, two (2) business days after the date on which the relevant order is placed by the customer.

**"Media Product"** means any book, magazine or other publication, sound recording, video recording, software product, computer game, videogame, or other media product in any format, including any related subscription, offered through an Amazon Site.

**"Purchase Price"** means the total amount payable or paid for Your Product (including taxes and shipping and handling charges only to the extent specified in the applicable [Tax Policies](#)).

**"Remittance Calculation Date"** is the date that is two (2) business days prior to the date of remittance (the **"Remittance Calculation Date"**).

**"Required Product Information"** means, with respect to each of Your Products in connection with a particular Amazon Site, the following (except to the extent expressly not required under the applicable Program Policies): (a) description, including as applicable, location-specific availability and options, scheduling guidelines and service cancellation policies; (b) SKU and UPC/EAN/JAN numbers, and other identifying information as Amazon may reasonably request; (c) information regarding in-stock status and availability, shipping limitations or requirements, and Shipment Information (in each case, in accordance with any categorizations prescribed by Amazon from time to time); (d) categorization within each Amazon product category and browse structure as prescribed by Amazon from time to time; (e) digitized image that accurately depicts only Your Product, complies with all Amazon image guidelines, and does not include any additional logos, text or other markings; (f) Purchase Price; (g) shipping and handling charge (in accordance with our standard functionality); (h) any text, disclaimers, warnings, notices, labels, warranties, or other content required by applicable Law to be displayed, or that are necessary for the safe use of Your Product, in connection with the offer, merchandising, advertising, or sale of Your Product; (i) any vendor requirements, restocking fees or other terms and conditions applicable to such product that a customer should be aware of prior to purchasing the product; (j) brand; (k) model; (l) product dimensions; (m) weight; (n) a delimited list of technical specifications; (o) SKU and UPC/EAN/JAN numbers (and other identifying information as we may reasonably request) for accessories related to Your Product that is available in our catalog; (p) the state or country Your Product ships from; and (q) any other information reasonably requested by us (e.g., the condition of used or refurbished products; and invoices and other documentation demonstrating the safety and authenticity of Your Products).

**"Seller-Fulfilled Products"** means any of Your Products that are not fulfilled using the Fulfillment by Amazon Service.

**"Shipment Information"** means, with respect to any of Your Products, the estimated or promised shipment and delivery date.

**"Street Date"** means the date(s), if any, specified by the manufacturer, distributor, and/or licensor of a product as the date before which specified information regarding such product (e.g., title of a book) should not be disclosed publicly, or such product should not be delivered or otherwise made available to customers.

**"URL Marks"** means any Trademark, or any other logo, name, phrase, identifier, or character string, that contains or incorporates any top level domain (e.g., .com, .edu, .ca, .fr, .jp) or any variation of a top level domain (e.g., dot com, dotcom, net, or com).

**"Your Transaction"** is defined in the General Terms of this Agreement; however, as used in these Selling on Amazon Service Terms, it means any and all such transactions through Selling on Amazon only.

### **Fulfillment by Amazon Service Terms**

Fulfillment by Amazon ("**FBA**") provides fulfillment and associated services for Your Products.

These FBA Service Terms are part of the Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in FBA. BY REGISTERING FOR OR USING FBA, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE [AGREEMENT](#), INCLUDING THESE FBA SERVICE TERMS. You expressly agree that Amazon may engage its Affiliate(s) or a third party in order to complete one or more of the fulfillment and associated services outlined below.

### **Fulfillment Services**

#### **F-1 Your Products**

Once you are accepted into FBA, you must apply to register each product you offer that you wish to include in the FBA program. We may refuse registration in FBA of any product, including on the basis that it is an FBA Excluded Product or that it violates applicable Program Policies. You may at any time withdraw registration of any of Your Products from FBA.

#### **F-2 Product and Shipping Information**

You will, in accordance with applicable Program Policies, provide accurate and complete information about Your Products registered in FBA, and will provide Fulfillment Requests for

any Units fulfilled using FBA that are not sold through an Amazon Site ("**Multi-Channel Fulfillment Units**"). You will promptly update any information about Your Products in accordance with our requirements and as necessary so that the information is at all times accurate and complete.

### **F-3 Shipping to Amazon**

**F-3.1** Except as otherwise provided in Section F-3.4 and Section F-5, FBA is limited to Units that are shipped to and from fulfillment centers located within the applicable Elected Country, to be delivered to customers in the same Elected Country only. You will ship Units to us in accordance with applicable Program Policies. You will be responsible for all costs incurred to ship the Units to the shipping destination (including costs of freight and transit insurance) and Amazon will not pay any shipping costs. You are responsible for payment of all customs, duties, taxes, and other charges. In the case of any improperly packaged or labeled Unit, we may return the Unit to you at your expense (pursuant to Section F-7) or re-package or re-label the Unit and charge you an administrative fee.

**F-3.2** You will not deliver to us any Unsuitable Unit; we may reject any shipment of Your Products.

**F-3.3** We may, at our option, allow you to ship Units at your expense (as described in Section F-9.2) to fulfillment centers using discounted shipping rates that we may make available to you for certain carriers. In such event, you will use the processes and supply the information that we require for you to obtain such discounted rates. You also must comply with standard operating procedures, weight and size restrictions, and other shipping requirements of the applicable carriers. If we provide you with the estimated shipping costs prior to shipment, you acknowledge and agree that actual shipping costs may vary from such estimates. In addition, if the weight of the Unit, as determined by the applicable carrier, differs from that submitted by you to us for purposes of determining the estimated shipping costs, then: (a) you may be charged more than the estimated shipping costs if the carrier determines that such Unit weighs more than as submitted by you; or (b) you may be charged the full amount of the estimated shipping costs even if the carrier determines the weight to be less than that submitted by you. You will not use carrier account information (e.g., carrier account number, amount of shipping rates, etc.) for any purpose, nor disclose such information to any third party, and you will protect such information as Amazon's confidential information in accordance with Section 11 of the General Terms of this Agreement. As between you, us, and the applicable carrier, you will be the shipper of record, and we will make payment to the carrier with respect to the shipment of all Units using such

discounted rates. Title and risk of loss for any Unit shipped using discounted rates provided by us under this Section will remain with you, and our provision of such shipping rates will not create any liability or responsibility for us with respect to any delay, damage, or loss incurred during shipment. You authorize the applicable carrier to provide us with all shipment tracking information.

**F-3.4** If you ship Units from outside the applicable Elected Country to fulfillment centers, you will list yourself as the importer/consignee and nominate a customs broker. If Amazon is listed on any import documentation, Amazon reserves the right to refuse to accept the Units covered by the import documents and any costs assessed against or incurred by Amazon will be collected from Your Bank Account, deducted from amounts payable to you, or by other method at our election.

#### **F-4 Storage**

We will provide storage services as described in these FBA Service Terms once we confirm receipt of delivery. We will keep electronic records that track inventory of Units by identifying the number of Units stored in any fulfillment center. We will not be required to physically mark or segregate Units from other inventory units (e.g., products with the same Amazon standard identification number) owned by us, our Affiliates or third parties in the applicable fulfillment center(s). If we elect to commingle Units with such other inventory units, both parties agree that our records will be sufficient to identify which products are Units. We may move Units among facilities. If there is a loss of or damage to any Units while they are being stored, we will, compensate you in accordance with the [FBA Guidelines](#), and you will, at our request, provide us a valid tax invoice for the compensation paid to you. If we compensate you for a Unit, we will be entitled to dispose of the Unit pursuant to [Section F-7](#). At all other times, you will be solely responsible for any loss of, or damage to, any Units. Our confirmed receipt of delivery does not: (a) indicate or imply that any Unit has been delivered free of loss or damage, or that any loss or damage to any Unit later discovered occurred after confirmed receipt of delivery; (b) indicate or imply that we actually received the number of Units of Your Product(s) specified by you for such shipment; or (c) waive, limit, or reduce any of our rights under this Agreement. We reserve the right to change scheduling restrictions and volume limitations on the delivery and storage of your inventory in fulfillment centers in accordance with Section 15 of the General Terms, and you will comply with any of these restrictions or limitations.

#### **F-5 Fulfillment**

As part of our fulfillment services, we will ship Units from our inventory of Your Products to the shipping addresses in the Elected Country included in valid customer orders, or submitted by you as part of a Fulfillment Request. We may ship Units together with products purchased from other merchants, including any of our Affiliates. We also may ship Units separately that are included in a single Fulfillment Request. If you participate in our export fulfillment services, we will also ship Your Products that we determine to be eligible (each, a "**Foreign-Eligible Product**") to Foreign Addresses within countries we determine to be eligible for foreign shipments, subject to the additional terms on foreign shipments in the applicable [FBA Guidelines](#).

## **F-6 Customer Returns**

**F-6.1** You will be responsible for and will accept and process returns of, and provide refunds and adjustments for, any Multi-Channel Fulfillment Units in accordance with the Agreement (including the applicable Program Policies).

**F-6.2** We will receive and process returns of any Amazon Fulfillment Units that were shipped to addresses within the Elected Country in accordance with the terms of your Seller Agreement, these FBA Service Terms, and the Program Policies. Any Sellable Units that are also Amazon Fulfillment Units and that are properly returned will be placed back into the inventory of Your Products in the FBA Program. We may fulfill customer orders for Your Products with any returned Amazon Fulfillment Units. Except as provided in [Section F-7](#), you will retake title of all Units that are returned by customers.

**F-6.3** Subject to [Section F-7](#), we will, at your direction, either return or dispose of any Unit that is returned to us by a customer and that we determine is an Unsuitable Unit.

**F-6.4** If Amazon receives a customer return of a Multi-Channel Fulfillment Unit, you will direct us to return or dispose of the Unit at your own cost failing which we may dispose of the Unit as provided in [Section F-7](#).

## **F-7 Returns to You and Disposal**

**F-7.1** You may, at any time, request that Units be returned to you or that we dispose of Units.

**F-7.2** We may with notice return Units to you, including upon termination of these FBA Service Terms. Returned Units will be sent to your designated shipping address. However, if (a) the designated shipping address we have for you is outdated or incorrect, (b) you have not provided or, upon our request, confirmed a designated shipping address in the Elected Country, or (c) we cannot make arrangements for you to pay for the return shipment, then the Unit(s) will be

deemed abandoned and we may elect to dispose of them as appropriate based on the inventory (e.g., by selling, recycling, donating, or destroying it) and retain any proceeds we may receive from the disposal.

We may dispose of any Unsuitable Unit (and you will be deemed to have consented to our action): (d) immediately if we determine that (i) the Unit creates a safety, health, or liability risk to Amazon, our personnel, or any third party; (ii) you have engaged in fraudulent or illegal activity; or (iii) we have cause to terminate your use of Services with immediate effect pursuant to Section 3 and are exposed to liability towards a third party; (e) if you fail to direct us to return or dispose of any Unsuitable Unit within thirty (30) days after we notify you that the Unit has been recalled; or (f) if you fail to direct us to return or dispose of any Unsuitable Unit within thirty (30) days (or as otherwise specified in the applicable Program Policies) after we notify you that its removal is required, for instance because your use of FBA is suspended or terminated or your seller account is suspended, terminated or closed. In addition, you will reimburse us for expenses we incur in connection with any Unsuitable Units.

We may dispose of any Unit we are entitled to dispose of (including any Unsuitable Units) in the manner we deem appropriate (e.g., by selling, recycling, donating, or destroying it) and retain any proceeds we may receive from the disposal.

**F-7.3** You may, at any time, request that we dispose of Units. In this case, we may dispose of these Units as appropriate based on the inventory (e.g., by selling, recycling, donating, or destroying it) and retain any proceeds we may receive from the disposal. Title to each disposed Unit will transfer to us (or a third party we select such as a charity) at no cost, free and clear of any liens, claims, security interests or other encumbrances to the extent required to dispose of the Unit, and we may retain any proceeds, we may receive from the disposal.

**F-7.4** You will promptly notify us of any recalls or potential recalls, or safety alerts of any of Your Products and cooperate and assist us in connection with any recalls or safety alerts, including by initiating the procedures for returning items to you under our standard processes. You will be responsible for all costs and expenses you, we or any of our or your Affiliates incur in connection with any recall or potential recall or safety alerts of any of Your Products (including the costs to return, store, repair, liquidate, or deliver to you or any vendor any of these products).

## **F-8 Customer Service**



**F-8.1** For Multi-Channel Fulfillment Units we will have no customer service obligations other than to pass any inquiries to your attention at the contact you provide, and to make available a reasonable amount of information regarding the status of the fulfillment of Your Products if you request it and if and to the extent we possess the requested information. You will ensure that all of your policies and messaging to your customers regarding shipping of Your Products and other fulfillment-related matters, reflect our policies and requirements, including with regard to shipping methods, returns, and customer service; and, you will conspicuously display on your website(s), in emails or in other media or communications any specific disclosures, messaging, notices, and policies we require.

**F-8.2** We will be responsible for all customer service issues relating to packaging, handling and shipment, and customer returns, refunds, and adjustments related to Amazon Fulfillment Units. We will determine whether a customer will receive a refund, adjustment or replacement for any Amazon Fulfillment Unit and we will require you to reimburse us where we determine you have responsibility in accordance with the Agreement (including these FBA Service Terms and the Program Policies). We will promptly notify you when you are responsible for a customer refund. You may appeal if you disagree with our finding within thirty (30) days after our notification, in addition to your right to request that Units be returned to you under Section F-7.1. Except as provided in this Section F-8 regarding any Amazon Fulfillment Units, customer service will be handled in accordance with your Seller Agreement.

**F-8.3** In situations relating to Amazon Fulfillment Units where the wrong item was delivered or the item was damaged or lost or is missing, unless we determine that the basis for such request is caused by you or any of your employees, agents, or contractors, we will, at our option: (a) for any Amazon Fulfillment Unit, (i) ship a replacement Unit to the customer and reimburse you in accordance with the [FBA Guidelines](#) for the replacement Unit, or (ii) process a refund to the customer and reimburse you in accordance with the FBA Guidelines for the Unit; or (b) for any Multi-Channel Fulfillment Unit, reimburse you in accordance with the FBA Guidelines for the Unit (and you will, at our request, provide us a valid tax invoice for the compensation paid to you). Any customer refund will be processed in accordance with the Selling on Amazon and the Transaction Processing Service Terms (if the Elected Country for a Service is the United States). Notwithstanding the Selling on Amazon Service Terms, we will be entitled to retain the applicable fees payable to us under the Selling on Amazon Service Terms and these FBA Service Terms, respectively. Except as expressly provided in this Section F-8.3, you will be responsible for all costs associated with any replacement or return.

**F-8.4** If we provide a replacement Unit or refund as described in Section F-8.3 to a customer and that customer returns the original Unit to us, we will be entitled to dispose of the Unit pursuant to Section F-7, or, if it is a Sellable Unit, we may, at our option, place such Unit back into your inventory in accordance with Section F-6. If we do put a Unit back into your inventory, you will reimburse us for the applicable Replacement Value (as described in the FBA Guidelines) of the returned Unit. Any replacement Unit shipped by us under these FBA Service Terms will be deemed to be, and will be treated in the same manner as, an order and sale of such Unit from you to the customer via the applicable Amazon Site or Service in accordance with, and subject to, the terms and conditions of this Agreement and your Seller Agreement.

## **F-9 Compensation for Fulfillment Services**

**F-9.1 Handling and Storage Fees.** You will pay us the applicable fees described in the applicable Fulfillment by Amazon [Fee Schedule](#). You will be charged the Storage Fees beginning on the day (up to midnight) that the Unit arrives at a fulfillment center and is available for fulfillment by Amazon (or in the case of any Unsuitable Unit, the arrival day (up to midnight)), until the earlier of: (a) the day (up to midnight) we receive a valid customer order for such product or a request from you to return or dispose of the Unit; or (b) the day (up to midnight) we actually ship the Unit to your designated return location or dispose of the Unit.

**F-9.2 Shipping and Gift Wrap.** For any Amazon Fulfillment Units we will determine the amounts charged to the customer for shipping and gift wrap services for the Units that we fulfill through the FBA Program. As between you and us, these charges will be your charges to the customer, and we will report them to you. We will charge you (and you will pay us) a fee equal to the amount of such charges to the customer. In the case of shipments of Units sold through the Amazon Site that qualify for the "Free Shipping" promotion, the amounts charged to the customer for shipping the Selling on Amazon Units that Amazon fulfills will first be charged to the customer and will next be deducted from the total charges to the customer as your promotion and Amazon will not charge you the fee described above. If you ship Units to us using the shipping rates that we may make available pursuant to Section F-3.3, you will reimburse us for the actual amounts charged to us by the applicable carrier for such shipments.

**F-9.3 Proceeds.** We may as appropriate keep part of or all proceeds of any Units that we are entitled to dispose of pursuant to F-7 above, or to which title transfers, including returned, damaged, or abandoned Units. You will have no security interest, lien, or other claim to the proceeds that we receive in connection with the sale, fulfillment, and/or shipment of these Units.

## **F-10 Indemnity**

In addition to your obligations under Section 6 of the General Terms of this Agreement, you also agree to indemnify, defend, and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives, and agents against any Claim that arises from or relates to: (a) the Units (whether or not title has transferred to us, and including any Unit that we identify as yours pursuant to Section F-4), including any personal injury, death, or property damage; (b) any of Your Taxes or the collection, payment, or failure to collect or pay Your Taxes; and, if applicable (c) any sales, use, value added, personal property, gross receipts, excise, franchise, business, or other taxes or fees, or any customs, duties, or similar assessments (including penalties, fines, or interest on any of the foregoing) imposed by any government or other taxing authority in connection with the shipment of Foreign-Eligible Products to Foreign Addresses (collectively, "**Foreign Shipment Taxes**").

#### **F-11 Release**

You, on behalf of yourself and any successors, subsidiaries, Affiliates, officers, directors, shareholders, employees, assigns, and any other person or entity claiming by, through, under, or in concert with them (collectively, the "**Releasing Parties**"), irrevocably acknowledge full and complete satisfaction of and unconditionally and irrevocably release and forever fully discharge Amazon and each of our Affiliates, and any and all of our and their predecessors, successors, and Affiliates, past and present, as well as each of our and their partners, officers, directors, shareholders, agents, employees, representatives, attorneys, and assigns, past and present, and each of them and all Persons acting by, through, under, or in concert with any of them (collectively, the "**Released Parties**"), from any and all claims, obligations, demands, causes of action, suits, damages, losses, debts, or rights of any kind or nature, whether known or unknown, suspected or unsuspected, absolute or contingent, accrued or unaccrued, determined or speculative (collectively, "**Losses**") which the Releasing Parties now own or hold or at any time have owned or held or in the future may hold or own against the Released Parties, or any of them, arising out of, resulting from, or in any way related to the shipment, export, or delivery of Your Products to Foreign Addresses, including any tax registration or collection obligations. You, on behalf of yourself and all other Releasing Parties, recognize that you, and each of them, may have some Losses, whether in tort, product liability, contract, warranty, or otherwise, against the Released Parties of which you, or any of them, are totally unaware and unsuspecting, or which may arise or accrue after the date you register for or use FBA, which the Releasing Parties are giving up by agreeing to these FBA Service Terms. It is your intention in agreeing to these FBA Service Terms that these FBA Service Terms will deprive the Releasing Parties of each and all such Losses and prevent the Releasing Party from asserting any such Losses against the Released

Parties, or any of them. In addition to the foregoing, you acknowledge, on behalf of yourself and all other Releasing Parties that you are familiar with Section 1542 of the Civil Code of the State of California, as follows:

**"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."**

You, on behalf of yourself and all other Releasing Parties, expressly waive and relinquish any rights that you had or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the law of any other jurisdiction, to the full extent that you may lawfully waive all such rights pertaining to the subject matter of these FBA Service Terms.

#### **F-12 Disclaimer**

IN ADDITION TO THE DISCLAIMER IN SECTION 7 OF THE GENERAL TERMS OF THIS AGREEMENT, WE DISCLAIM ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND YOU WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE OR OTHERWISE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE, OR SHIPMENT OF YOUR PRODUCTS BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR CONTRACTORS OR AGENTS.

#### **F-13 Effect of Termination**

Your termination rights are set forth in Section 3 of this Agreement. Following any termination of the Agreement or these FBA Service Terms in connection with a particular Elected Country, we will, as directed by you, return to you or dispose of the Units held in that Elected Country as provided in Section F-7. If you fail to direct us to return or dispose of the Units within thirty (30) days (or as otherwise specified in the applicable Program Policies) after termination, then we may elect to return and/or dispose of the Units in whole or in part, as provided in Section F-7, and you agree to such actions. Upon any termination of these FBA Service Terms in connection with a particular Elected Country, all rights and obligations of the parties under these FBA Service Terms in connection with such Elected Country will be extinguished, except that the rights and obligations of the parties under Sections F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-11, F-12, and F-13 with respect to Units received or stored by Amazon as of the date of termination will survive the termination.

#### **F-14 Tax Matters**

You understand and acknowledge that storing Units at fulfillment centers may create tax nexus for you in any country, state, province, or other localities in which your Units are stored, and you will be solely responsible for any taxes owed as a result of such storage. If any Foreign Shipment Taxes or Your Taxes are assessed against us as a result of performing services for you in connection with the FBA Program or otherwise pursuant to these FBA Service Terms, you will be responsible for such Foreign Shipment Taxes and Your Taxes and you will indemnify and hold Amazon harmless from such Foreign Shipment Taxes and Your Taxes as provided in Section F-10 of these FBA Service Terms.

### **F-15 Additional Representation**

In addition to your representations and warranties in Section 5 of the General Terms of this Agreement, you represent and warrant to us that: (a) you have valid legal title to all Units and all necessary rights to distribute the Units and to perform under these FBA Service Terms; (b) you will deliver all Units to us in new condition (or in such condition otherwise described by you in the applicable Your Product listing) and in a merchantable condition; (c) all Units and their packaging will comply with all applicable marking, labeling, and other requirements required by Law; (d) no Unit is or will be produced or manufactured, in whole or in part, by child labor or by convict or forced labor; (e) you and all of your subcontractors, agents, and suppliers involved in producing or delivering Units will strictly adhere to all applicable Laws of the Elected Country, its territories, and all other countries where Units are produced or delivered, regarding the operation of their facilities and their business and labor practices, including working conditions, wages, hours, and minimum ages of workers; and (f) that all Foreign-Eligible Products (i) can be lawfully exported from Canada, Mexico, or the United States, as applicable, without any license or other authorization; and (ii) can be lawfully imported into, and comply with all applicable Laws of, any eligible country.

### **FBA Definitions**

**"Amazon Fulfillment Units"** means Units fulfilled using FBA that are sold through an Amazon Site. For avoidance of doubt, if you have successfully registered for or used both the FBA and Selling on Amazon Services, then the term "Amazon Fulfillment Units" and the defined term "Amazon Fulfilled Products" in the Selling on Amazon Service Terms both refer to the same items.

**"FBA Excluded Product"** means any Unit that is an Excluded Product or is otherwise prohibited by the applicable [Program Policies](#).



**"Foreign Address"** means (a) if the Elected Country is the United States, any mailing address that is not (i) within the fifty states of the United States or Puerto Rico, or (ii) an APO/FPO address; and (b) if the Elected Country is not the United States, any mailing address that is not within the Elected Country.

**"Fulfillment Request"** means a request that you submit to us (in accordance with the standard methods for submission prescribed by us) to fulfill one or more Multi-Channel Fulfillment Units.

**"Multi-Channel Fulfillment Units"** has the meaning in Section F-2.

**"Sellable Unit"** means a Unit that is not an Unsuitable Unit.

**"Seller Agreement"** means the Selling on Amazon Service Terms, the Merchants@ Program Agreement, the Marketplace Participation Agreement, any successor to any of these agreements, or any other similar agreement (as determined by Amazon) between you and us that permits you to offer products and services via a particular Amazon Site.

**"Shipping Information"** means with respect to any purchased Unit(s), the following information: the name of the recipient, the shipping address, the quantity of Units to be shipped, and any other shipping-related information we may reasonably request.

**"Unit"** means a unit of Your Product that you deliver to Amazon in connection with the FBA Program.

**"Unsuitable Unit"** means a Unit: (a) that is defective, damaged, unfit for a particular purpose, or lacking required label(s); (b) the labels for which were not properly registered with Amazon before shipment or do not match the product that was registered; (c) that is an FBA Excluded Product or does not comply with the Agreement (including applicable Service Terms and Program Policies); (d) that Amazon determines is unsellable or unfulfillable; or (e) that Amazon determines is otherwise unsuitable.

### **Amazon Advertising Service Terms**

The Amazon Advertising Service Terms govern your use of Amazon Advertising, a Service that allows you to advertise your products. The Amazon Advertising Service Terms apply to your use of the Ad Services.

Your use of the Ad Services (as defined in the Amazon Advertising Agreement) is governed by the Amazon Advertising Agreement. You accept the Amazon Advertising Agreement, which may be updated from time to time by Amazon in accordance with its terms. The Amazon

Advertising Agreement is available at <https://advertising.amazon.com/terms>. In the event of any conflict between the General Terms or Program Policies and the Amazon Advertising Agreement with respect to the Ad Services, the Amazon Advertising Agreement will prevail to the extent of the conflict. If the Amazon Advertising Agreement is deemed unlawful, void, or for any reason unenforceable, then the General Terms will govern your access to and use of the Ad Services.

### **Transaction Processing Service Terms**

BY REGISTERING FOR OR USING ANY SERVICE OTHER THAN AMAZON ADVERTISING FOR WHICH THE ELECTED COUNTRY IS THE UNITED STATES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THESE TRANSACTION PROCESSING SERVICE TERMS FOR THAT SERVICE. **NOTWITHSTANDING THE FOREGOING, IF A SEPARATE AGREEMENT GOVERNS THE OFFER, SALE OR FULFILLMENT OF YOUR PRODUCTS ON THE US AMAZON SITE, THE TERMS OF THAT AGREEMENT WILL CONTINUE TO GOVERN THE PROCESSING OF YOUR TRANSACTIONS TO THE EXTENT DESCRIBED IN THAT AGREEMENT.**

### **P-1 Payments Processing Agency Appointment**

For non-invoiced orders, you authorize Amazon Payments, Inc. to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, receiving and holding Sales Proceeds on your behalf, remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates. For invoiced orders, you authorize: (a) Amazon Capital Services, Inc. to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, and receiving and holding Sales Proceeds on your behalf; and (b) Amazon.com Services LLC to act as your agent for purposes of remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates. Amazon Payments, Inc., Amazon Capital Services, Inc., and Amazon.com Services LLC are each an “**Amazon Payments Agent**”. The applicable Amazon Payments Agents provide the services described in these Transaction Processing Service Terms and the related services described in Sections S-1.4, S-2.2, S-5, and F-8.3 of the Agreement (collectively, the “**Transaction Processing Services**”).

When a buyer instructs us to pay you, you agree that the buyer authorizes and orders us to commit the buyer's payment (less any applicable fees or other amounts we may collect under this

Agreement) to you. You agree that buyers satisfy their obligations to you for Your Transactions when we receive the Sales Proceeds. We will remit funds to you in accordance with this Agreement.

## **P-2 Remittance**

Subject to Section 2 of the General Terms of this Agreement, the applicable Amazon Payments Agents will remit funds to you in accordance with Section S-5 of the Agreement and these Transaction Processing Service Terms. Each applicable Amazon Payments Agent's obligation to remit funds collected or received by it or otherwise credited to your available balance in connection with Your Transactions is limited to funds in your available balance that have become available in accordance with this Agreement less amounts owed to Amazon and any taxes that Amazon automatically calculates, collects and remits to a tax authority according to applicable law, as specified in the Tax Policies, subject to chargeback or reversal or withheld for anticipated claims in accordance with this Agreement. Without limiting Amazon's rights to collect any amounts you owe, the applicable Amazon Payments Agent's receipt of Sales Proceeds or crediting of Sales Proceeds to your available balance discharges your obligation to pay applicable fees and other amounts under this Agreement to the extent the Sales Proceeds received or credited equal or exceed the fees and other amounts you owe and the Sales Proceeds are applied to the payment of those fees and amounts.

## **P-3 Your Funds**

Your Sales Proceeds will be held in an account with the applicable Amazon Payments Agent (a "**Seller Account**") and will represent an unsecured claim against that Amazon Payments Agent. Your Sales Proceeds are not insured by the Federal Deposit Insurance Corporation, nor do you have any right or entitlement to collect Sales Proceeds directly from any customer. Prior to disbursing funds to you, an Amazon Payments Agent may combine Sales Proceeds held with the funds of other users of the Services, invest them, or use them for other purposes permitted by applicable Laws. You will not receive interest or any other earnings on any Sale Proceeds. To the extent required by applicable Laws, an Amazon Payments Agent will not use any funds held on your behalf for its corporate purposes, will not voluntarily make such funds available to its creditors in the event of bankruptcy or for any other purpose, and will not knowingly permit its creditors to attach such funds.

## **P-4 Verification**

We may at any time require you to provide any financial, business or personal information we request to verify your identity. You authorize us to obtain from time to time consumer credit reports to establish or update your Seller Account or in the event of a dispute relating to this Agreement or the activity under your Seller Account. You agree to update all Seller Account information promptly upon any change. The [Amazon Payments Privacy Notice](#) applies to transactions processed by Amazon Payments, Inc.

## **P-5 Dormant Accounts**

If there is no activity (as determined by us) in connection with your Seller Account for the period of time set forth in applicable unclaimed property laws and we hold Sales Proceeds on your behalf, we will notify you by means designated by us and provide you the option of keeping your Seller Account open and maintaining the Sales Proceeds in your Seller Account. If you do not respond to our notice(s) within the time period we specify, we will send the Sales Proceeds in your Seller Account to your state of residency, as determined by us based on the information in your Seller Account. If we are unable to determine your state of residency or your Seller Account is associated with a foreign country, your funds may be sent to the State of Delaware.

## **Selling Partner API Terms**

### **API-1 Description of the Selling Partner APIs**

The "Selling Partner APIs" enable your systems to interface with certain features or functionality we make available to you. These Selling Partner API Terms concern and apply only to your use of the Selling Partner APIs unless specifically provided otherwise. Under the Selling Partner API Terms, you may authorize parties who (a) develop Applications to support you using the Selling Partner APIs or the API Materials, (b) have registered with us as Developers, and (c) who have agreed to the Marketplace Developer Agreement ("Developers") to access Confidential Information and Your Materials via the Selling Partner APIs provided, in each case, that where Confidential Information is disclosed to Developers, you shall remain liable for the acts or omissions of such Developers as if such acts or omissions were your own. If you wish to use the Selling Partner APIs directly or develop software or a website that interfaces with the Selling Partner APIs or the API Materials (an "Application"), you must register as a Developer.

We may make available Selling Partner APIs (including the Marketplace Web Services APIs) and software, data, text, audio, video, images, or other content we make available in connection with the Selling Partner APIs, including related documentation, software libraries, and other supporting materials, regardless of format (collectively the "API Materials") that permit your

systems to interface with certain features or functionality available to you. You may authorize Developers to access Confidential Information and Your Materials via the Selling Partner APIs solely for the purpose of supporting your business on Amazon and provided, in each case, that where Confidential Information is disclosed to Developers, you shall remain liable for the acts or omissions of such Developers as if such act or omissions were your own. All terms and conditions applicable to the Selling Partner APIs and the API Materials in this Agreement are solely between you and us. API Materials that are public or open source software ("Public Software") may be provided to you under a separate license, in which case, notwithstanding any other provision of this Agreement, that license will govern your use of those API Materials. For the avoidance of doubt, except to the extent expressly prohibited by the license governing any API Materials that are Public Software, all of the non-license provisions of this Agreement will apply.

## **API-2 License and Related Requirements**

### **API-2.1 Generally.**

We grant you a limited, revocable, non-exclusive, non-sublicenseable, nontransferable license during the term of the Agreement to allow Developers to access and use Confidential Information and Your Materials through the Selling Partner APIs and the API Materials solely in support of your use of the Services covered by this Agreement. As between you and us, we or our licensors own all right, title, and interest in and to the Confidential Information, the Selling Partner APIs, the API Materials, any technical and operational specifications, security protocols and other documentation or policies provided or made available by us with respect to the Selling Partner APIs or the API Materials (the "Selling Partner API Specifications"), and our internal data center facilities, servers, networking equipment, and host software systems that are within our or their reasonable control and are used to provide the Selling Partner APIs or the API Materials (the "Amazon Network").

### **API-2.2 License Restrictions.**

You may authorize Developers to access Confidential Information and Your Materials through the Selling Partner APIs and the API Materials only through APIs documented and communicated by us in accordance with any applicable Selling Partner API Specifications. You may not authorize any other party to do any of the following with the Confidential Information, the Selling Partner APIs and the API Materials: (a) reverse engineer, decompile, or disassemble them; (b) modify or create derivative works based upon them in whole or in part; (c) distribute copies of them; (d) remove any proprietary notices or labels on them; (e) use any Public



Software in any manner that requires, pursuant to the license applicable to such Public Software, that the Confidential Information, the Selling Partner APIs and the API Materials be disclosed, licensed, distributed, or otherwise made available to anyone; (f) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to them; (g) access or use them in a way intended to avoid incurring any applicable fees or exceeding usage limits or quotas; (h) access or use them for any purpose unrelated to your use of Services; or (i) access or use them for fraudulent or illegal activities or activities that violate our policies or are otherwise harmful to us or any third parties. The limitations regarding Data Use in Section 11 above apply to any information you disclose or receive by the direct or indirect use of the Selling Partner APIs.

#### **API-2.3 No License for Direct Access.**

For the avoidance of doubt, these Selling Partner API Terms do not provide you a license to directly access or use the Selling Partner APIs, or install, copy, use, or distribute API Materials. Direct use of the Selling Partner APIs may only be licensed to Developers.

#### **API-2.4 Account Identifiers and Credentials.**

You must use the account IDs and any unique public key/private key pair issued by us to provide access to your data via the Selling Partner APIs ("Account Identifiers and Credentials") in accordance with these Selling Partner API Terms to authorize Developers to access the Selling Partner APIs on your behalf. You may only authorize access to Confidential Information and Your Materials via the Selling Partner APIs in the way that we prescribe. Your Account Identifiers and Credentials are for your personal use only and you must maintain their secrecy and security. You are solely responsible for all activities that occur using your Account Identifiers and Credentials, regardless of whether the activities are undertaken by you or a third party (including your employees, contractors, or agents). You will provide us with notice immediately if you believe an unauthorized third party may be using your Account Identifiers and Credentials or if your Account Identifiers and Credentials are lost or stolen. We are not responsible for unauthorized use of your Account Identifiers and Credentials.

#### **API-2.5 Security of Your Materials and Confidential Information.**

You are solely responsible for authorizing others to access the Selling Partner APIs on your behalf and taking your own steps to maintain appropriate security, protection, and backup of the Confidential Information and Your Materials processed pursuant to your access to the Selling Partner APIs and the API Materials, including any Confidential Information you have disclosed to Developers in accordance with this Agreement. We are not responsible for any unauthorized

access to, alteration of, or deletion, destruction, damage, loss, or failure to store any of the Confidential Information or Your Materials in connection with the Selling Partner APIs (including as a result of your or any third party's errors, acts, or omissions). If you believe (acting reasonably) that a personal data breach has occurred in relation to any customer personal data in your possession or otherwise under your control (including in the possession of a Developer), you shall immediately notify Amazon of such personal data breach (in sufficient detail) for information purposes, and promptly take any actions (or require a Developer take such actions, if relevant) as applicable to you under data privacy Laws.

### **API-3 Termination**

#### **API-3.1 Termination of Your Access to the Selling Partner APIs and the API Materials.**

Without limiting the parties' rights and obligations under this Agreement, the Amazon Marketplace Developer Agreement, or the Amazon Marketplace API License Agreement, we may limit, suspend, or terminate your access to the Selling Partner APIs and the API Materials for convenience with 30 days' notice. We may terminate immediately if (a) we determine that you have materially breached this Agreement and failed to cure within 7 days of a cure notice; (b) you or your account have been engaged in deceptive, fraudulent, or illegal activity; or (c) your use of the Selling Partner APIs and the API Materials may harm our customers.

Upon any suspension or termination of your access to the Selling Partner APIs and the API Materials, you will immediately cease authorizing others to use the Selling Partner APIs and the API Materials. Upon any termination of your access to the Selling Partner APIs and the API Materials, you will also immediately destroy all API Materials. Upon any suspension or termination of your access to the Selling Partner APIs and the API Materials, we may cause your Account Identifiers and Credentials to cease to be recognized by the Amazon Network for the purposes of the Selling Partner APIs and the API Materials.

#### **API-4 Modifications to the Selling Partner APIs and the API Materials**

We may change or discontinue the Selling Partner APIs or the API Materials (including by changing or removing features or functionality of the Selling Partner APIs or the API Materials) from time to time. For any material changes that will negatively affect your business, we will provide notice under Section 18.

#### **API-5 Disclaimers**

THE SELLING PARTNER APIS AND THE API MATERIALS ARE PROVIDED "AS IS". WE AND OUR AFFILIATE COMPANIES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SELLING PARTNER APIS OR THE API MATERIALS, INCLUDING ANY WARRANTY THAT THE SELLING PARTNER APIS OR THE API MATERIALS WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT ANY MATERIALS OR DATA YOU ACCESS, USE, STORE, RETRIEVE, OR TRANSMIT IN CONNECTION WITH THE SELLING PARTNER APIS, INCLUDING YOUR MATERIALS, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATE COMPANIES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATE COMPANIES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) THE INABILITY TO USE THE SELLING PARTNER APIS OR THE API MATERIALS FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; OR (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SELLING PARTNER APIS OR THE API MATERIALS.



Amazon Sellers Attorney <info@amazonsellers.attorney>

**Re: Shenzhen Xingchen Xuanyuan Industrial Co., Ltd. v. Amazon.com Services, LLC, Amazon.com, Inc. - Case 01-22-0000-2381**

1 message

**Julie Guo** <julie.guo@jlawglobe.com>

27 June 2022 at 14:56

To: ICDR Toni Gomes <TGomes@adr.org>, john.maalouf@maaloufashford.com

Cc: "Goldmark, John" <johngoldmark@dwt.com>, "Place, Isabel" <isabelplace@dwt.com>, Nichelle Guzman

<nichelle@amazonsellers.attorney>, "Thompson, Danielle" <DanielleThompson@dwt.com>, AAA Emails

<legal@jlawglobe.com>, Amazon Sellers Attorney <info@amazonsellers.attorney>, Peter <PeterBae@dwt.com>, Rachel

<rachelherd@dwt.com>, "Simpson, Arthur" <arthursimpson@dwt.com>, JS Law <jlawusa@gmail.com>

Dear Arbitrator Maalouf and Ms. Gomes,

Thank you for your email. For the preliminary hearing call, the Seller Claimant will need to cite the arbitration agreement between Amazon and the Claimant, which is at Section 18 of the Amazon Services Business Solution Agreement ("BSA"), binding to all parties. Attached is a copy of the full BSA for your reference and below is the particular section we would like to bring forward:

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would.

The arbitration will be conducted by the American Arbitration Association (AAA) under its commercial rules. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. The expedited procedures of the AAA's rules will apply only in cases seeking exclusively monetary relief under \$50,000, and in such cases the hearing will be scheduled to take place within 90 days of the arbitrator's appointment. Likewise, Amazon will not seek attorneys' fees and costs from you in arbitration unless the arbitrator determines the claims are frivolous. **You may choose to have the arbitration conducted by telephone, based on written submissions, or in person at a mutually agreed location. Pg. 10 of the BSA.**

"You" is defined as the applicant, or the business employing the applicant and any of its Affiliates (in other words, the Claimant). Pg. 1 of the BSA.

Pursuant to Section 18 of BSA, the seller can choose to conduct the arbitration based on written submission, and the arbitrator must follow the arbitration terms. **In this case, the seller claimant has chosen to have the arbitration conducted based on written submission, no evidentiary hearings.**

Amazon offers a global marketplace/platform for sellers from all over the world. Contracting party sellers understand 1) there will be time differences and even communication technology differences for sellers from different parts of the world, thus it is hard or sometimes impossible to have a in person or video/telephone evidentiary hearing for sellers from all over the world; 2) it is expensive to heave in person or video/telephone, since sellers has to pay the second AAA filing fee, zoom license or hearing room fee, if there is an evidentiary hearing. Thus, Amazon and sellers agreed in their agreement that sellers can choose to have the arbitration based on written submissions, **which offers sellers from all over the world a more affordable and convenient way to do business or solve disputes with Amazon.** The right to choose to conduct the arbitration based on written submission is one of the important considerations for the

sellers to enter the agreement BSA with Amazon, thus, it shall not be revised after the entering of the agreement without the sellers' consent.

We respectfully request that the arbitrator and AAA follow the arbitration agreement between the sellers and Amazon, allowing the sellers to fully exercise their rights to choose conducting the arbitration based on written submission. At the same time, the Claimant can allow Amazon to do a video/audio deposition on the seller representative if Amazon would like to verify the seller representative identity, as long as there is no extra cost for the Seller Claimant.

Thank you. We look forward to the preliminary hearing call.

Best,

Julie

On Wed, Jun 22, 2022 at 2:25 PM <[TGomes@adr.org](mailto:TGomes@adr.org)> wrote:

Hello,

Please review the attached correspondence regarding the above-referenced case.

Feel free to contact me with any questions, comments or concerns you have related to this matter.

Thank you.

[Logo]  
ICDR Toni Gomes  
Manager of ADR Services  
American Arbitration Association

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[cid:imageb6c3c0.PNG@7c998538.4a8fbe4e]

The information in this transmittal (including attachments, if any) is privileged and/or confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.

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 **21.10.26 Amazon Services Business Solutions Agreement.pdf**  
305K



**AMERICAN ARBITRATION ASSOCIATION  
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

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Shenzhen Xingchen Xuanyuan Industrial Co., Ltd.

Claimant,

-v-

Case Number: 01-22-0000-2381

Amazon.com Services, LLC,  
Amazon.com, Inc.  
Amazon.com.CA, Inc., and  
Servicios Comerciales Amazon Mexico S. De R.L. De

Respondents.

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**PROCEEDURAL ORDER NUMBER 1**

The Arbitrator in the above-matter (John J. Maalouf) held a Preliminary Hearing via telephone with counsel for the Parties, beginning at 10:00am on June 27, 2022. In attendance at the Hearing were counsel for the Claimant, Kenneth G. Eade, of the Law Office of Kenneth G. Eade, and counsel for the Respondents, Arthur Simpson, of Davis Wright Tremaine LLP.

A full discussion, lasting approximately forty-five (45) minutes, was held concerning *inter alia*, matters referred to in the Proposed Agenda, contained in the letter to the Parties and Arbitrator, dated June 22, 2022, from Toni Gomes, Case Manager in this matter.

1. Stipulation of Uncontested Facts

The Parties agreed to jointly prepare a Stipulation of Uncontested Facts. The Stipulation is to be submitted directly to the Arbitrator no later than two (2) weeks prior to the Hearing Date.

2. Document Exchange

The Parties have agreed to limit the number of requests for documents to a maximum of twenty (20) each. The Arbitrator will deal, on the application of either Party, with disputes arising from any of the requests.

3. Application for Early Disposition

Counsel for Claimant requested leave to submit an application for early disposition of an issue presented in its Claim, in advance of the Hearing on the merits. Claimant and Respondent shall each have a fair opportunity to present their respective cases, as to whether or not such application should be heard. Claimant shall submit its written brief on this issue by July 11, 2022, and Respondent shall submit its reply by no later than July 18, 2022.

4. Award

The Parties requested that the Arbitrator render a Reasoned Award.

5. Exhibits

The Parties agreed to submit a consolidated set of joint exhibits to the Arbitrator.

6. List of Witnesses

The Parties will each submit a Witnesses List to the Tribunal, along with a brief summary describing the nature of each witnesses' testimony, no later than two (2) weeks prior to the Hearing Date.

7. In Person Hearing

Counsel for Respondents requested an in-person hearing in order for the Arbitrator to have the opportunity to determine the credibility of certain witnesses. The Parties agreed that two (2) days would be sufficient for such a Hearing, and the Hearing dates were set for October 19, 2022 and October 20, 2022, beginning at 10:00am each day. The place of the Hearing will be the ICDR Offices in New York City.

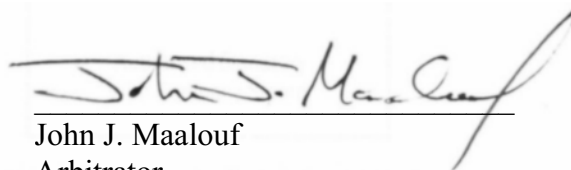
8. Foreign Language, Interpretation

The Claimant requested that an English/Mandarin translator be present at the hearing. The translator will be court certified and paid for by the Claimant.

9. Court Reporter

The Parties agreed that no Court reporter would be necessary.

The rulings, determinations and agreements set forth herein constitute the Order of the Arbitrator.



John J. Maalouf  
Arbitrator

Dated June 28, 2022

New York, NY

NYSCEF DOC. NO. 

AMERICAN  
ARBITRATION  
ASSOCIATION\*

INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION\*

RECEIVED NYSCEF: 06/16/2023

Statement Date: 07-Oct-22

Balance Currently Due: \$44,550.00

Case #: 01-22-0000-2381-1-IG

Case Manager: ICDR Toni Gomes [TGomes@adr.org](mailto:TGomes@adr.org)

Pay PIN: 11847201

Detail Invoice/Statement

Julie Guo, Esq.  
JS Law Firm P.C.  
315 Madison Avenue  
Floor 3  
New York, NY 10017

Representing: Shenzhen Xingchen Xuanyuan Industrial Co., Ltd.

Re: Shenzhen Xingchen Xuanyuan Industrial Co., Ltd.  
Vs.  
Amazon.com Services, LLC, Amazon.com, Inc.  
Amazon.com.CA, Inc., and  
Servicios Comerciales Amazon Mexico S. De R.L. De

Statement Date	Case #	Previous Balance	Credits/Cancellations	New Charges	Statement Balance
07-Oct-22	01-22-0000-2381	\$44,550.00	\$0.00	\$0.00	\$44,550.00

Bill Line Date Transaction Date	Bill Line #	Description	Amount	Credits/ Cancellations	Balance	Due Date
15-Jul-2022	13491209	Your Share of the Neutral Compensation Deposit covering Pre-Hearing, Hearing and Post-Hearing Study time	\$32,400.00		\$32,400.00	19-Sep-2022
14-Jul-2022	13489582	Final Fee	\$2,875.00		\$2,875.00	14-Jul-2022
20-May-2022	13436813	Your Share of the Neutral Compensation Deposit covering the Initial 10 hours of Preliminary Matters	\$2,750.00		\$2,750.00	03-Jun-2022
09-Feb-2022	13343216	Your Share of the Emergency Arbitrator's Compensation Deposit for Additional Study time	\$4,000.00		\$4,000.00	24-Feb-2022
27-Jan-2022	13334660	Your Share of the Emergency Arbitrator Compensation Deposit covering the Initial 20 hours of Study time	\$11,000.00		\$2,525.00	10-Feb-2022
09-Mar-2022		ACH/Wire		\$8,475.00		
18-Jan-2022	13328200	Initial Administrative Fee	\$3,750.00		\$0.00	18-Jan-2022
18-Jan-2022		Credit Card		\$3,750.00		

Statement Balance	Balance Currently Due
\$44,550.00	\$44,550.00



07-Oct-22
<b>Balance Currently Due</b>
\$44,550.00
<b>Case #</b>
01-22-0000-2381-1-IG

Case Manager: ICDR Toni Gomes [TGomes@adr.org](mailto:TGomes@adr.org)

Pay PIN: 11847201

## Payment Options

### Paying by Credit Card or eCheck

To pay with a credit card or eCheck online, go to [www.adr.org](http://www.adr.org), click on "*File or Access your Case*" and then select "*Quick Pay an Invoice*" and use this **Pay PIN: 11847201**. Please note that, beginning September 2022, where permitted by law, a processing fee will be assessed on payments made by credit card; all such processing fees are non-refundable, regardless of whether AAA fees or compensation or expense deposits are later refunded in full or in part. Please note that we no longer accept the American Express card. There is no processing fee for payments made by echeck or debit cards.

### Wire Transfer

As information transmitted by the bank is often truncated due to limited space, please email your reference information (Case #/Bill Line #/Program #/Party Name) with the date and amount of your wire, to ensure that your payment is credited promptly and correctly (e.g. 011400021841 P1 or #1234567 P2 or EDU1234). Please email as follows:

For active cases: send to your AAA case representative and [corpfinance@adr.org](mailto:corpfinance@adr.org)

For new filings (where your case number is not known): send to [casefiling@adr.org](mailto:casefiling@adr.org) and [corpfinance@adr.org](mailto:corpfinance@adr.org)

### FOR WIRES / ACH / EFT

**Name of Bank:** Wells Fargo Bank

**Address:** 150 East 42<sup>nd</sup> Street, 24<sup>th</sup> FL., New York, NY 10017, USA

**Account Name:** AAA/American Arbitration Association

**Account Number:** 2000017952068

**ABA/Transit Number:** 121000248

**Reference:** Case # and Bill Line #/Party Name; or Program # (as applicable)

**Swift Code/BIC:** WFBIUS6S

Note: Please take steps to ensure that your bank does in fact wire the entire amount to our account. From time to time, certain banks will keep a portion of the wire transfer for their own service fee, leaving a balance due to the AAA/ICDR.

### Paying by Check

Please return this page with your payment (please indicate the Case # on the check) to:

120 Broadway, 21st Floor  
New York, NY 10271  
Telephone: (212)484-4181  
Fax: (212)246-7274





Amazon Sellers Attorney <info@amazonsellers.attorney>

**Re: Shenzhen Xingchen Xuanyuan Industrial Co., Ltd. v. Amazon.com Services, LLC, Amazon.com, Inc. - Case 01-22-0000-2381**

1 message

JS Law <jslawusa@gmail.com>

29 June 2022 at 05:43

To: john.maalouf@maaloufashford.com, ICDR Toni Gomes <TGomes@adr.org>

Cc: "Goldmark, John" <johngoldmark@dwt.com>, "Place, Isabel" <isabelplace@dwt.com>, Nichelle - AMZ Sellers Attorney <nichelle@amazonsellers.attorney>, "Thompson, Danielle" <DanielleThompson@dwt.com>, Legal <legal@jslawglobe.com>, "Bae, Peter" <PeterBae@dwt.com>, "Herd, Rachel" <rachelherd@dwt.com>, Amazon Sellers Attorney <info@amazonsellers.attorney>

Dear Ms. Gomes,

The seller claimant also hereby submit the arbitration cost estimate and comparison of written submission and in person hearing and respectfully request this doc to be included for the AAA's review for this matter. Attached pls find a PDF copy and two exhibits of intl flight ticket search. Thank you.

**Arbitration Cost for Amazon Sellers under Compulsory Arbitration Clause of BSA**

Section 18 of Amazon Services Business Solution Agreement (BSA), which the third-party sellers have to adhere to when registering an Amazon seller account to sell their product on Amazon marketplace, provides a compulsory arbitration clause. Due to the compulsory arbitration provision, third-party sellers have to go through a more expensive arbitration process instead of more affordable litigation in the court. Considering that the Supreme Court ruled in some cases that, if a large company includes a compulsory arbitration clause in its agreement, it shall try to make the arbitration more affordable.

Section 18 of BSA provides that the seller can choose to have the arbitration conducted based on written submission, which offers sellers from all over the world a more comparably affordable and convenient way to do business or solve disputes with Amazon, because if there is no evidentiary hearing, then the seller does not need to pay the second AAA filing fee, the arbitrator fee hearing, the AAA hearing zoom fee, translator fee, and the int'l travel expense. Please see below for the arbitration cost estimate for Amazon seller cases in connection with the dispute with Amazon for improper account blocking and entire sales proceeds freezing in the seller account.

**Arbitration Cost estimate and comparison for Seller Xingchen Based in China**

Amazon suddenly blocked the third-party seller Xingchen's seller account on Amazon and withheld the entire sales proceeds of \$145,000 in the seller account, via an auto email notification, with the accusation of review manipulation, without providing a shred of evidence. appealed to Amazon to request the release of its sales proceeds withholding by Amazon, but Amazon rejected the appeal and refused to release the sales proceeds to the seller.

Claim amount: \$145,000 of sales proceed withholding by Amazon upon account blocking in 2021

**A. Arbitration Cost Estimate for Arbitration by Written Submission** (NO evidentiary hearing, one deposition by Amazon to verify the seller credibility): **\$24,025-35,025 (17-24% of claim amount)**

1. First AAA filing fee under AAA/ICDR fee schedule table: \$ 2,025

2. Arbitrator Fee: 22,000-33,000

Hourly fee of Arbitrator fee for study: \$ 550

Arbitrator charges around 80-120 hours for the whole arbitration, totaling \$44,000-66,000

Seller's share of arbitrator fee for the whole arbitration, totaling 22,000-33,000

**B. Arbitration Cost Estimate for Arbitration by In Person Hearing: \$45,425-73,212 (31-50% of claim amount)**

1. First AAA filing fee under AAA/ICDR fee schedule table: \$ 2,025

2. Second AAA filing fee under AAA/ICDR fee schedule table: \$1,450

3. Arbitrator Fee 29,500-40,500

Hourly fee of Arbitrator fee for study: \$ 550

Arbitrator charges 80-120 hours for the whole arbitration study time, totaling \$44,000-66,000

Arbitrator charges \$750 per hour for hearing, for two-day hearing, the amount is \$15,000

Seller's share of arbitrator fee for the arbitration study and hearing time, totaling 29,500-40,500

4. NYC Hearing room fee: \$600-1000 per day, 1200-2000 for two days, seller pay half \$600-1,000
  5. Translator fee: 2000 per day, 4000 for two days, seller pay half, \$2,000
  6. Court reporter fee or recording fee, \$1000-2000 dollars
  7. Intl Travel Expense
- flight ticket (round trip, economy, see the google ticket search record) \$6,850-21,237  
Hotel accommodation in Manhattan for 5 days \$1000-2000  
Visa and other expense: \$1000

**The EXTRA arbitration cost for in person hearing: \$21,400-38,187, which is extra 15%-26% of the claimed amount. TOTAL arbitration cost estimate for in person hearing: \$45,425-73,212, which is 31-50% of claim amount. The seller claimant respectfully requests that the arbitrator and AAA follow the arbitration agreement between the sellers and Amazon, allowing the sellers to fully exercise their rights to choose conducting the arbitration based on written submission.**

On Tue, Jun 28, 2022 at 6:47 PM JS Law <[jlawusa@gmail.com](mailto:jlawusa@gmail.com)> wrote:

Dear Arbitrator Maalouf and Ms. Gomes,

The seller Claimant respectfully disagreed with the Letter which the arbitrator just distributed.

Firstly Mr. Eade just confirmed with me by email that he did not agree to the in-person hearing at the preliminary hearing.

Secondly, the seller claimant disagreed with the statement that Chinese can travel overseas freely. I am quite familiar with travel to China since I used to travel to China often. Many Chinese cannot even get their passport or visa renewed due to covid-19 control in China, there are very few flights between Us and China now and the ticket is quite expensive in case someone can get one.

Thirdly, The seller claimant disagreed the arbitrator has rights to ignore the arbitration agreement and incur over 10k-30k dollars of financial burden to the seller claimant for a 140k dollars of dispute without the seller claimant's consent. Pursuant to the arbitration agreement, Seller can choose to have the arbitration to be conducted based on written submission. Seller Claimant already made a compromise by agreeing to one deposition by Amazon for them to verify the seller's credibility if Amazon insists on it and is willing to pay for the cost. Any party who requests an evidentiary hearing shall bear the cost.

The seller claimant hereby respectfully requests AAA to review the matter. If the arbitrator and seller claimant cannot agree on the matter, the seller claimant will request AAA to resend another arbitrator list for parties to select another arbitrator. The seller claimant will reserve the rights to bring this matter to the court. Thank you.

Best,

Julie

----- Forwarded message -----

From: **Julie Guo** <[julie.guo@jlawglobe.com](mailto:julie.guo@jlawglobe.com)>

Date: Tue, Jun 28, 2022 at 6:21 PM

Subject: Fwd: Shenzhen Xingchen Xuanyuan Industrial Co., Ltd. v. Amazon.com Services, LLC, Amazon.com, Inc. - Case 01-22-0000-2381

To: JS Law <[jlawusa@gmail.com](mailto:jlawusa@gmail.com)>

----- Forwarded message -----

From: **John J Maalouf** <DE>

Date: Tue, Jun 28, 2022 at 5:05 PM

Subject: Re: Shenzhen Xingchen Xuanyuan Industrial Co., Ltd. v. Amazon.com Services, LLC, Amazon.com, Inc. - Case 01-22-0000-2381

To: <[info@amazonsellers.attorney](mailto:info@amazonsellers.attorney)>, <[arthursimpson@dwt.com](mailto:arthursimpson@dwt.com)>

Cc: <[johngoldmark@dwt.com](mailto:johngoldmark@dwt.com)>, <[isabelplace@dwt.com](mailto:isabelplace@dwt.com)>, <[nichelle@amazonsellers.attorney](mailto:nichelle@amazonsellers.attorney)>, <[DanielleThompson@dwt.com](mailto:DanielleThompson@dwt.com)>, <[legal@jlawglobe.com](mailto:legal@jlawglobe.com)>, <[PeterBae@dwt.com](mailto:PeterBae@dwt.com)>, <[rachelherd@dwt.com](mailto:rachelherd@dwt.com)>, ICDR Toni Gomes <[TGomes@adr.org](mailto:TGomes@adr.org)>

Dear Parties,

Attached please find a copy of our correspondence of even date, addressed to Julie Guo, along with a copy of our Procedural Order No.: 2.

Very truly yours,

John J. Maalouf  
Arbitrator

John J. Maalouf  
Senior Partner  
Maalouf Ashford & Talbot, LLP  
48 Wall Street, 11th Floor  
New York, New York 10005  
United States of America  
Telephone: 212.537.5035  
Facsimile: 212.537.9268  
[john.maalouf@maaloufashford.com](mailto:john.maalouf@maaloufashford.com)  
[www.maaloufashford.com](http://www.maaloufashford.com)

New York City | Dubai | Riyadh | Jeddah | Dammam  
Al Khoper | Al Qatif | Beirut | Cairo | Baghdad | Erbil  
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On Jun 28, 2022, at 9:53 AM, John J Maalouf <[john.maalouf@maaloufashford.com](mailto:john.maalouf@maaloufashford.com)> wrote:

Dear Messrs. Eade and Simpson:

Attached hereto, please find a copy of our Procedural Order No. 1.

Very truly yours,

John J. Maalouf  
Senior Partner  
Maalouf Ashford & Talbot, LLP  
48 Wall Street, 11th Floor  
New York, New York 10005  
United States of America  
Telephone: 212.537.5035  
Facsimile: 212.537.9268  
[john.maalouf@maaloufashford.com](mailto:john.maalouf@maaloufashford.com)  
[www.maaloufashford.com](http://www.maaloufashford.com)

New York City | Dubai | Riyadh | Jeddah | Dammam  
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On Jun 22, 2022, at 2:25 PM, [TGomes@adr.org](mailto:TGomes@adr.org) wrote:

Hello,

Please review the attached correspondence regarding the above-referenced case.

Feel free to contact me with any questions, comments or concerns you have related to this matter.

Thank you.




[Logo]  
ICDR Toni Gomes  
Manager of ADR Services  
American Arbitration Association

T: 212 484 4184 F: 212 246 7274 E: [TGomes@adr.org](mailto:TGomes@adr.org)<<mailto:TGomes@adr.org>>  
120 Broadway, 21st Floor, New York, NY 10271  
[adr.org](https://www.adr.org)<<https://www.adr.org>> | [icdr.org](https://www.icdr.org)<<https://www.icdr.org>> |  
[aaamediation.org](https://www.aaamediation.org)<<https://www.aaamediation.org>>  
[cid:imageb6c3c0.PNG@7c998538.4a8fbe4e]

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<INTC013.pdf><INTC001.pdf>

3 attachments

-  **New York to Shenzhen \_ Google Flights 1.pdf**  
178K
-  **New York to Shenzhen \_ Google Flights-2.pdf**  
205K
-  **Arbitration Cost for Amazon Sellers under Compulsory Arbitration Clause of BSA.pdf**  
54K

**AMERICAN ARBITRATION ASSOCIATION  
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

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Shenzhen Xingchen Xuanyuan Industrial Co., Ltd.

Claimant,

-v-

Case Number: 01-22-0000-2381

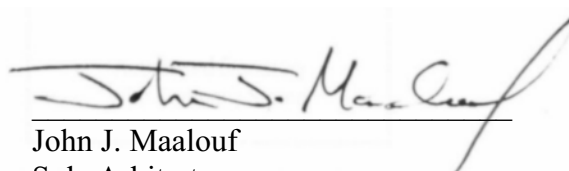
Amazon.com Services, LLC,  
Amazon.com, Inc.  
Amazon.com.CA, Inc., and  
Servicios Comerciales Amazon Mexico S. De R.L. De

Respondents.

---

**PROCEEDURAL ORDER NUMBER 8**

The Tribunal, pursuant to its authority under the ICDR Rules, including Article 39(3) thereof, hereby Orders that this case be terminated due to non-payment of the required fees by the Claimant.

  
\_\_\_\_\_  
John J. Maalouf  
Sole Arbitrator

Dated June 1, 2023

New York, NY



**REQUEST FOR JUDICIAL INTERVENTION**

Supreme COURT, COUNTY OF New York

Index No: \_\_\_\_\_ Date Index Issued: \_\_\_\_\_

**For Court Use Only:**

<b>CAPTION</b> Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.	IAS Entry Date
SHENZHEN XINGCHEN XUANYUAN INDUSTRIAL CO. LTD.  <div style="text-align: right;">Plaintiff(s)/Petitioner(s)</div> -against- AMAZON.COM SERVICES, LLC, AMAZON.COM, INC.  <div style="text-align: right;">Defendant(s)/Respondent(s)</div>	
	Judge Assigned
	RJI Filed Date

**NATURE OF ACTION OR PROCEEDING:** Check only one box and specify where indicated.

<b>COMMERCIAL</b>	<b>MATRIMONIAL</b>
<input type="checkbox"/> Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.) <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Insurance (where insurance company is a party, except arbitration) <input type="checkbox"/> UCC (includes sales and negotiable instruments) <input type="checkbox"/> Other Commercial (specify): _____ <b>NOTE:</b> For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the <b>COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C)</b> .	<input type="checkbox"/> Contested <b>NOTE:</b> If there are children under the age of 18, complete and attach the <b>MATRIMONIAL RJI Addendum (UCS-840M)</b> . For Uncontested Matrimonial actions, use the Uncontested Divorce RJI ( <b>UD-13</b> ). <b>REAL PROPERTY</b> Specify how many properties the application includes: _____ <input type="checkbox"/> Condemnation <input type="checkbox"/> Mortgage Foreclosure (specify): <input type="checkbox"/> Residential <input type="checkbox"/> Commercial Property Address: _____ <b>NOTE:</b> For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the <b>FORECLOSURE RJI ADDENDUM (UCS-840F)</b> . <input type="checkbox"/> Partition <b>NOTE:</b> Complete and attach the <b>PARTITION RJI ADDENDUM (UCS-840P)</b> . <input type="checkbox"/> Tax Certiorari (specify): Section: _____ Block: _____ Lot: _____ <input type="checkbox"/> Tax Foreclosure <input type="checkbox"/> Other Real Property (specify): _____
<b>TORTS</b>	<b>OTHER MATTERS</b>
<input type="checkbox"/> Adult Survivors Act <input type="checkbox"/> Asbestos <input type="checkbox"/> Environmental (specify): _____ <input type="checkbox"/> Medical, Dental or Podiatric Malpractice <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Products Liability (specify): _____ <input type="checkbox"/> Other Negligence (specify): _____ <input type="checkbox"/> Other Professional Malpractice (specify): _____ <input type="checkbox"/> Other Tort (specify): _____	<input type="checkbox"/> Certificate of Incorporation/Dissolution [see <b>NOTE</b> in <b>COMMERCIAL</b> section] <input type="checkbox"/> Emergency Medical Treatment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Local Court Appeal <input type="checkbox"/> Mechanic's Lien <input type="checkbox"/> Name Change/Sex Designation Change <input type="checkbox"/> Pistol Permit Revocation Hearing <input type="checkbox"/> Sale or Finance of Religious/Not-for-Profit Property <input type="checkbox"/> Other (specify): _____
<b>SPECIAL PROCEEDINGS</b>	
<input type="checkbox"/> Child-Parent Security Act (specify): <input type="checkbox"/> Assisted Reproduction <input type="checkbox"/> Surrogacy Agreement <input type="checkbox"/> CPLR Article 75 - Arbitration [see <b>NOTE</b> in <b>COMMERCIAL</b> section] <input type="checkbox"/> CPLR Article 78 - Proceeding against a Body or Officer <input type="checkbox"/> Election Law <input type="checkbox"/> Extreme Risk Protection Order <input type="checkbox"/> MHL Article 9.60 - Kendra's Law <input type="checkbox"/> MHL Article 10 - Sex Offender Confinement (specify): <input type="checkbox"/> Initial <input type="checkbox"/> Review <input type="checkbox"/> MHL Article 81 (Guardianship) <input type="checkbox"/> Other Mental Hygiene (specify): _____ <input type="checkbox"/> Other Special Proceeding (specify): _____	

**STATUS OF ACTION OR PROCEEDING** Answer YES or NO for every question and enter additional information where indicated.

	YES	NO	
Has a summons and complaint or summons with notice been filed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	If yes, date filed: 06/16/2023
Has a summons and complaint or summons with notice been served?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	If yes, date served: _____
Is this action/proceeding being filed post-judgment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	If yes, judgment date: _____

**NATURE OF JUDICIAL INTERVENTION** Check one box only and enter additional information where indicated.

<input type="checkbox"/> Infant's Compromise	
<input type="checkbox"/> Extreme Risk Protection Order Application	
<input type="checkbox"/> Note of Issue/Certificate of Readiness	
<input type="checkbox"/> Notice of Medical, Dental or Podiatric Malpractice	Date Issue Joined: _____
<input type="checkbox"/> Notice of Motion	Relief Requested: _____ Return Date: _____
<input type="checkbox"/> Notice of Petition	Relief Requested: _____ Return Date: _____
<input type="checkbox"/> Order to Show Cause	Relief Requested: _____ Return Date: _____
<input type="checkbox"/> Other Ex Parte Application	Relief Requested: _____
<input type="checkbox"/> Partition Settlement Conference	
<input type="checkbox"/> Poor Person Application	
<input type="checkbox"/> Request for Preliminary Conference	
<input type="checkbox"/> Residential Mortgage Foreclosure Settlement Conference	
<input type="checkbox"/> Writ of Habeas Corpus	
<input checked="" type="checkbox"/> Other (specify): trial of Complaint	

RELATED CASES				
List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the <b>RJI Addendum (UCS-840A)</b> .				
Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

PARTIES				
For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the <b>RJI Addendum (UCS-840A)</b> .				
Un-Rep	Parties	Attorneys and Unrepresented Litigants	Issue Joined	Insurance Carriers
	List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 <sup>rd</sup> party plaintiff, etc.)	For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	For each defendant, indicate if issue has been joined.	For each defendant, indicate insurance carrier, if applicable.
<input type="checkbox"/>	Name: SHENZHEN XINGCHEN XUANYUAN INDUSTRIAL CO. LTD. Role(s): Plaintiff/Petitioner	ZHIHUI GUO, JS Law, 200 East 36th Street, Room 16A , New York,, NY 10016, 9177731868, jslawusa@gmail.com	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input type="checkbox"/>	Name: AMAZON.COM SERVICES, LLC Role(s): Defendant/Respondent	John Magliery, 1251 Avenue of the Americas, 21st Floor, New York, NY 10020, (212) 603-6444, johnmagliery@dwt.com	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input type="checkbox"/>	Name: AMAZON.COM, INC. Role(s): Defendant/Respondent	John Magliery, 1251 Avenue of the Americas, 21st Floor, New York, NY 10020, (212) 603-6444, johnmagliery@dwt.com	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	

**I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.**

Dated: 06/16/2023

ZHIHUI GUO

Signature

4766705

ZHIHUI GUO

Attorney Registration Number

Print Name

*This form was generated by NYSCEF*

## SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF New York

\_\_\_\_\_  
SHENZHEN XINGCHEN XUANYUAN INDUSTRIAL CO. LTD.

Plaintiff(s)/Petitioner(s)

-against-

AMAZON.COM SERVICES, LLC, AMAZON.COM, INC.

Defendant(s)/Respondent(s)

\_\_\_\_\_  
X

Index No:

RJI No. (if any):

**COMMERCIAL DIVISION****Request for Judicial Intervention Addendum**

COMPLETE WHERE APPLICABLE [add additional pages if needed]:

Plaintiff/Petitioner's cause(s) of action [check all that apply]:

- ☒ Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g. unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g. sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices)
- ☐ Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units)
- ☐ Transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only
- ☐ Shareholder derivative actions — without consideration of the monetary threshold
- ☐ Commercial class actions — without consideration of the monetary threshold
- ☐ Business transactions involving or arising out of dealings with commercial banks and other financial institutions
- ☐ Internal affairs of business organizations
- ☐ Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters
- ☐ Environmental insurance coverage
- ☐ Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage)
- ☐ Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures — without consideration of the monetary threshold
- ☐ Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues — without consideration of the monetary threshold

Plaintiff/Petitioner's claim for compensatory damages [exclusive of punitive damages, interest, costs and counsel fees claimed]:

74500.00

Plaintiff/Petitioner's claim for equitable or declaratory relief [brief description]:

Rule section 2 is unenforceable

Defendant/Respondent's counterclaim(s) [brief description, including claim for monetary relief]:

N/A

I REQUEST THAT THIS CASE BE ASSIGNED TO THE COMMERCIAL DIVISION. I CERTIFY THAT THE CASE MEETS THE JURISDICTIONAL REQUIREMENTS OF THE COMMERCIAL DIVISION SET FORTH IN 22 NYCRR § 202.70(a), (b) and (c).

Dated: 06/16/2023

ZHIHUI GUO

SIGNATURE

ZHIHUI GUO

PRINT OR TYPE NAME